SEATTLE POST-INTELLIGENCER
http://seattlepi.nwsource.com/opinion/289132_rainiervalley19.html

'Renewal' not good for Rainier Valley

Thursday, October 19, 2006

By DANIEL FINK
GUEST COLUMNIST

"Community renewal" is on the way to Southeast Seattle. According to the city's proposed plan, it involves removing the neighborhood's citizens from their property.

This evening, at 6:30 p.m., the city of Seattle, through the Southeast District Council, will hold a public forum at the Rainier Cultural Center to sell its proposed "Community Renewal Plan." Essentially, the plan involves declaring the entire Rainier Valley "blighted" under Washington's Community Renewal Law. This, in turn, would give the city the power of eminent domain over the neighborhood -- that is, the power to kick people out of their homes and small businesses and possibly transfer the property to someone else.

According to the city, the proposed plan is necessary to eliminate "blight" in Rainier Valley. However, the city already has the power to deal with specific, individual properties that are truly blighted. It wants to use the Community Renewal Law because doing so would allow it to condemn large swaths of land to make way for new retail and residential development.

The city insists the power of eminent domain is necessary to attract private investors to Rainier Valley. But there are a number of major, privately funded construction projects already planned or under way. In other words, development is already occurring as it should: through the market, with willing sellers and buyers negotiating a fair price. If the city grants itself the power to take property by force, such private efforts will be thwarted.

To sell its plan, the city is paying for a slick advertising campaign complete with rosy predictions about future development. A consultant is presenting outreach events and glossy publications to the community.

The presentations are misleading and confusing, to say the least. For example, one flier suggests the plan will "preserve the diversity of SE Seattle," "preserve affordable housing," "encourage economic growth" and "reduce displacement." How any of those things will be accomplished by forcing Rainier Valley's diverse and hardworking residents from their property is beyond me. It is not surprising that many of the presentations do not even mention eminent domain. Those that do insist it will be used only as a last resort. Last resort simply means if you're unwilling to sell, you're gone.

Just as misleading, the city emphasizes the below-average incomes and above-average poverty and crime rates that exist in Rainier Valley to justify eminent domain.

But that's a smoke screen because those problems have absolutely nothing to do with many of the properties the city wants to demolish. Moreover, the city has legitimate tools for dealing with crime and poverty. It can increase police presence or fund neighborhood watch programs. It can offer tax credits for small businesses.

My wife and I are lifelong residents of Rainier Valley and want to be part of its renaissance. We have worked hard and have taken financial risks to purchase and renovate property here. We believe that the area is turning the corner. We hope to see our hard work and investment pay off.

Many Rainier Valley residents, however, are newcomers. They are honest, hardworking people. Many came here to escape oppression from the governments in their home countries. Now they face displacement by the government of Seattle.

They and all residents of Rainier Valley should turn out tonight to let the city know they won't stand for it.

Daniel Fink is a property owner and lifelong resident of Rainier Valley.

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ISSUES • INSIGHT • IMPACT

October 26, 2006

Blight Flight
Rainier Valley agency idea draws heat

By CYDNEY GILLIS
Staff Reporter

First came the gasps over the city's definition of affordable housing. Then came the jeers about how the city wants to keep the poor from being displaced as the wealthy move into Rainier Valley.

After that, last Thursday's public meeting on a city proposal to use eminent domain in southeast Seattle turned into an outpouring of emotion from those opposed to the plan.

"I have three properties in this area, and I've worked damn hard to get what I have," Rainier Beach resident Fai Mathews told city officials. "Nobody is going to walk in and take nothing from me because that's my whole life."

The majority of the 175 people who attended the forum at the Rainier Valley Cultural Center shared Mathews' sentiment, with one calling the city's idea to create a "community renewal agency" — one with the power to condemn property — a boondoggle.

The proposed agency, explained Steve Johnson, interim director of the city's Office of Economic Development, would help facilitate investment and strengthen commercial nodes, particularly around the light rail stations coming soon on Martin Luther King Way South and Rainier Avenue South.

Johnson showed a rendering of a five-story "town center" of offices, housing and retail in place of the Firestone and Schuck's currently at Rainier Avenue and South McClellan Street. In another rendering, a Safeway sign adorned a commercial development on Martin Luther King Way near Othello Station.

Such developments, Johnson said, will require larger parcels of land that a community renewal agency could assemble by buying or condemning smaller parcels. The plan includes giving the Seattle Housing Authority the right to do strictly commercial development and, among the negatives, requires declaring Rainier Valley a "blighted" area, Johnson said.

But Rick Hooper of the Office of Housing said the city will work to ensure

that some condos are affordable and provide funding to nonprofits to build reasonable rentals. The gasps and jeers began when Hooper defined "affordable": rentals aimed at people making $30,000 to $50,000 a year, and first-time homebuyers making $40,000 to $70,000.

At the end of the presentation, when a city-paid facilitator called for breaking into small discussion groups, the audience refused, then took a vote, with a third opting to join a small group downstairs and two-thirds staying in the center's theater.

One of them was Kwan Fong, a laundromat and property owner whose daughter interpreted Chinese for him. He questioned why more actual property owners weren't represented at the meeting. Others claimed that the 9,000 meeting notices the city sent out looked like junk mail.

"As soon as our investments are worth something," business owner Rod Tim said, "we're going to be thrown out for some gigantic developer who never lived down here."

That, said Michael Bindas, an attorney with the Institute for Justice, is what's wrong with the city's plan: It can't preserve diversity and affordable housing by taking away the homes and businesses of Rainier Valley's diverse, working-class community for private development.

"You guys are so busy concerned [being] about these damn Safeways and these other businesses, what about children in this area?" Mathews asked. "What about the jobs you guys promised from Sound Transit?"

"I know about your promises — they're empty, and I'm tired of empty promises."

[Event]

A new group called MCOM (Many Cultures, One Message) has formed to oppose the use of eminent domain in Rainier Valley. It plans to urge that the city cut funding for exploring the idea at a City Council budget hearing set for Mon., Oct. 30, 5:30 p.m., at City Hall, 600 Fourth Ave., Seattle.

2129 2nd Ave. Seattle, WA 98121
Tel: 206.441.3247 Email:rchange@speakeasy.org
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Condemn lightly

Sunday, November 19, 2006

SEATTLE POST-INTELLIGENCER EDITORIAL BOARD

Sound Transit's light-rail line will fuel redevelopment in Southeast Seattle. With government creating the conditions for economic renewal, it makes sense to have formal community involvement in shaping the changes.

But the city's role must be limited. Forget using the power of eminent domain to acquire, assemble and sell properties for redevelopment.

The city doesn't seem ready to foreswear using use its power to take land with compensation for public projects. The administration has completed a study that could lead to a concerted community renewal effort under a state law that, among other things, permits use of eminent domain. But Mayor Greg Nickels is months away from sending any proposal to City Council for its consideration.

The city has land use powers and investments that can properly aid renewal. But even the talk of eminent domain has created an emotional atmosphere. And redevelopment is just the type of eminent domain usage the public rightly finds most offensive, whether it ends up being for a tacky strip mall or an attractive urban living project with condominiums, low-income housing and retail outlets.

In the wake of a widely criticized U.S. Supreme Court decision on eminent domain, Washington state residents heard a lot about it couldn't happen here. As Seattle attorneys for the Institute for Justice point out, this case shows it can. The Institute's William Maurer says Renton recently looked at eminent domain for one area before rejecting the idea and Auburn could be headed toward it after declaring much of its downtown blighted. Stronger guarantees from the state Legislature are in order.

Leslie Miller, president of the SouthEast District Council, would like to see the redevelopment discussion get back to how communities can help shape their own future. Indeed. The discussions are vital. Spokeswoman Marianne Bichsel said Nickels expects Southeast Seattle to see the city's biggest changes in the next five years and he wants current community members to benefit.

The Nickels administration has an excellent policy of increasing the attention paid to Southeast Seattle. Getting eminent domain and its powers off the table would help the city get back to building fair public-private partnerships that spur creative developments fitting community values.

NEWS

January 16, 2007

Condemnation

Putting Renewal at Risk, Neighbors Reject City Proposal

By Cydney Gillis

A fight in Rainier Valley to stop the city from condemning property for commercial development is over, at least for now: Last week, in the wake of a leaked report showing strong public opposition, the city said it's dropping the proposal.

"The condemnation piece is off the table," said Marianne Bichsel, spokeswoman for Mayor Greg Nickels. "People didn't like it."

Opponents aren't jumping for joy yet, however, because they say a community vote on the issue is still coming Wednesday, January 24—and Nickels's support means anything is possible.

The proposal allows the city to declare Rainier Valley a blighted area under the state's Community Renewal Law, and to create a new city agency with the power, through eminent domain, to condemn property in commercial zones that include homes along Rainier Avenue South and Martin Luther King Jr. Way South. The plan would have started at two intersections where the city wants retail and condo development around Sound Transit's future light-rail stations.

With light rail expected to drive runaway development in Rainier Valley, supporters say the community renewal agency would have included a citizen oversight board that could have guided development and protected the area's low-income housing and small, immigrant-owned businesses. Opponents, however, howled that the agency would have helped wipe out affordable housing and independent businesses by using eminent domain to facilitate giveaways to private developers.

"Taking property from individuals for shops or condos is wrong," said Pat Murakami, a Rainier Valley business owner and member of the Southeast District Council (SEDC).

Back in March, the SEDC agreed to collect public input on the idea for the city's Office of Economic Development, which paid for outreach consultant Angela Tarah to present the idea in community meetings, council president Leslie Miller said.

A report Tarah wrote in December shows there was conflict from the get-go. Critics said the planning group in charge of writing the proposal didn't represent all of Rainier Valley. The group included low-income housing developers from HomeSight, the Mount Baker Housing Association, SouthEast Effective Development (SEED), and the Seattle Housing Authority, all of which stood to get grants from the new agency.

Due to disagreements in the group, the actual outreach time got cut from five months to two, the report says, with few volunteers stepping up to do things like pass out information. If they did, Miller said, they were seen as supporting the proposal. Many didn't want to be associated with it, SEED director Earl Richardson said.

A survey taken at a public forum last August showed opinion was nearly split on the idea. By the time of a second forum in October, a new survey showed that 75 percent of the respondents either opposed the stated plan or any plan involving condemnation—something Tarah credits to opposition from Murakami and a group of property owners who say the city has no business taking land for private developers.

Miller disagrees, saying community renewal would have addressed displacement and created affordable housing for low-income, minority families in the South End. "The majority of people in southeast Seattle are people of color," she said. "If we lose them, Seattle loses them. I think that's huge for us as a city." ✱

The Seattle Times
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Saturday, January 20, 2007 - 12:00 AM

Local Digest

Pastor wants bias law repealed

Ken Hutcherson, senior pastor at Redmond's Antioch Bible Church, filed an initiative Friday to repeal a state law banning discrimination against gays and lesbians.

The law, passed early last year, adds sexual orientation to a state law that bans discrimination based on race, gender, religion and other categories.

Hutcherson must gather signatures from at least 224,800 registered voters by July 6 to put the initiative on the November ballot.

An effort last year to overturn the law failed when the referendum's sponsor, Tim Eyman, didn't gather enough signatures to qualify for the fall ballot.

Seattle

Regulators approve chinook plan

A plan to restore chinook salmon runs in Puget Sound was officially blessed by federal regulators Friday.

The National Marine Fisheries Service, which oversees recovery of the fish, issued the plan, which relies largely on habitat restoration and protection with attention to hatcheries and fishing as well.

Much of the plan, which was released for public comment a year ago, was crafted by local groups organized in 14 major river basins of the Sound. Its success is also expected to depend heavily on work at the local level.

The fish, the largest salmon in the region, is listed as threatened under the Endangered Species Act, which requires a recovery plan. The chinook's decline is blamed on water pollution, habitat loss, overfishing and hatcheries that can overwhelm wild stocks of the fish, among other things.

Seattle

School survey asks about make-up days

The Seattle School District has launched an online parent/guardian survey to determine how to make up five school days canceled because of bad weather.

The district's contract with the Seattle Education Association (SEA) calls for make-up days to be added at the end of the school year. This would mean that the last student day would be Wednesday, June 27. However, the district and SEA are exploring other options, and would like to have input from parents and guardians.

The link to the survey can be found at: http://www.seattleschools.org/area/m_news/index.dxml.

The deadline for responses is midnight Monday.

Seattle

Nickels drops community plan

Mayor Greg Nickels has dropped a controversial "community renewal" proposal for southeast Seattle that drew loud protests because it would have expanded the city's power to take private property.

The Southeast District Council, a neighborhood group, was scheduled to take up the city's "community renewal" plan at a Wednesday meeting. But council President Leslie Miller said Friday that she learned from the mayor's office the renewal proposal was "off the table."

In a letter to Miller, Deputy Mayor Tim Ceis said the proposal was shelved because it lacked clear support among Rainier Valley residents.

Everett

Police investigating suspicious death

Everett police are investigating what they're calling the "suspicious death" of a man whose body was found Thursday night in an apartment complex in the 600 block of West Casino Road.

The man had not been identified Friday night. Police described him as a white male in his 30s.

The Everett Fire Department was first on the scene, responding to a call about an unconscious man, and called police at 6:49 p.m.

Anyone with information about the death is asked to call Everett police at 425-257-8490.

Seattle Times staff and news services

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MONDAY ▪ February 27, 2006

Should you fear a legal land grab?

Highlands face a blight future

By Dean A. Radford
Journal Reporter

RENTON — Parts of the Renton Highlands are showing their age, with ill-kept homes not built to last for decades and shopping areas that aren't raking in the big bucks.

That's not meant to condemn an entire neighborhood, because there are homes tended lovingly and thriving businesses that serve their customers well.

It's just that there are too many of the former in a chunk of the city's largest residential area just east of Interstate 405 and centered along Northeast Sunset Boulevard.

The city has worked for years to change that, and the public will have plenty of say about the final plan to revitalize the Highlands, said a key city official who often takes the brunt of the residents' criticism.

"It's not like this is going to happen in the middle of the night," said Alex Pietsch, administrator of the city's Department of Economic

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Blight

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Development, Neighborhoods and Strategic Planning.

One powerful tool city officials have is the right to condemn property, especially if it's blighted. They haven't yet decided whether they will use it in the Highlands.

Nor have they designated any neighborhood as blighted, a decision the City Council will make.

But if they do, condemnation — or the use of eminent domain — could have sweeping implications for whole neighborhoods and not just individual properties.

The traditional Highlands area is where generations of Renton residents have lived, within an easy commute to the Boeing and Paccar plants.

Now city officials, led by Mayor Kathy Keolker, are looking to remake the Highlands in a suburban version of urban renewal.

Keolker, who has made neighborhood renewal one of the hallmarks of her years in office, will talk about the Highlands in her State of the City address Wednesday.


Kathy Keolker

One idea is for the ubiquitous duplexes and small homes to give way to townhomes, which a consultant characterizes as "the next generation's new single-family housing."

Governments typically use eminent domain for a greater public good or use, such as building a highway. In Washington state, it can't be used to benefit a private developer.

Renton City Attorney Larry Warren also told the City Council recently that cities cannot acquire property to simply transfer it for redevelopment to a third party.

But Renton officials are armed with a newly updated and invigorated nuisance ordinance and a market analysis that shows home values in the Highlands are typically lower than those in other parts of the city. That's one definition of blight.

This right of eminent domain has some activist residents of the Renton Highlands concerned about their private property rights and the future of their homes. They wonder if the city will use its nuisance ordinance to argue their neighborhood is blighted.

They're not opposed to condemning the worst properties and going after absentee landlords. But they prefer a chance to redevelop their properties on their own and with helpful regulations from the city, rather than a wholesale cleansing.

Conversely, the city's Pietsch knows of property owners who want to work with the city to redevelop their land.

Their views were expressed passionately at a recent meeting of the Highlands Community Association. They were upset that elected officials didn't attend the meeting, but the City Council has yet to see a formal proposal from city staff.

What worries them in particular is that the city hasn't ruled out the use of eminent domain.

"They have ideas exactly of what they want to do, superimposed on us. We don't want them to take over," said Howard McOmber, a real estate agent and property adviser to the Highlands Community Association. He lives in the Highlands and has sold real estate for about 30 years.

He and others believe that the city actually doesn't want them to improve their properties because ultimately that would increase the cost the city would pay them as just compensation if their property is condemned.

"We can get more money by developing the property ourselves," he said.

But the city has the law and legal precedent on its side, if it chooses to take advantage of them. The city couldn't act arbitrarily or capriciously and any condemnation proceedings could end up in court to determine whether they meet definitions of public good.

Steve DiJulio, a former Kent city attorney who now represents government and property owners in eminent domain proceedings, said that government clearly has the right to redevelop blighted areas.

The definition of blight is made by the local governments, he said, following certain standards. Some "blighted areas" may include properties that are in good shape, he said, but are still subject to condemnation.

"It's not the individual property, it's the area's status," he said, adding it doesn't work to have one property out of several that's not available for redevelopment.

Governments don't often declare a neighborhood as blighted in order to redevelop it, because the process is expensive and difficult, DiJulio said.

Pietsch, Renton's top development official, said the city is working on new zoning proposals and possible public investments for the Highlands and will present a land-use plan to the City Council later.

City staff hasn't yet figured out how to implement the plan, he said, but he recognizes that residents are interested in the city's position on condemnation. He asks for the community's patience as it prepares the plan.

"The Highlands neighborhood has been a high priority of the council for 10 years," he said.

Dean Radford covers Renton. He can be reached at dean.radford@kingcountyjournal.com or 253-872-6719.

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SATURDAY ▪ April 15, 2006

Highlands' renewal vision upsets some residents

Community members fear plans will displace them from their homes

By Dean A. Radford
Journal Reporter

RENTON.— A tug of war is going on in the Renton Highlands over the fate of World War II-era homes that in many cases are falling into disrepair.

Everyone seems to agree the homes must go, but it's the pace at which a small pocket of the Highlands is restored — or renewed — that has divided the community, and potentially city leaders.

The idea is to turn the neighborhood centered around Sunset Boulevard Northeast just east of Interstate 405 into an urban village, where people of all incomes, races and ages live, shop and work.

But the word "renewal" frightens some residents, who fear the city intends to declare their area blighted, a first step toward condemning property for redevelopment.

This power of eminent domain is an absolute last resort, city officials insist, and they point out they haven't even turned their vision for the Highlands area into a plan.

However, the zoning changes the Planning Commission and the City Council are considering would further the goals of higher housing densities.

Some too elderly to move

Last Wednesday, the city's Planning Commission was told not to overlook the human side and toll of its decision. It heard often-emotional testimony about those who are too elderly

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Highlands: Mayor's vision includes affordable homes

CONTINUED FROM A1

or too poor to move from their small homes.

The city is trying to tear apart their neighborhood, they said.

Mayor Kathy Keolker argues her vision for affordable housing ensures the poor and the elderly aren't booted from the neighborhood by rents they can't afford.

And redevelopment of the Highlands Shopping Center, which has struggled for financial success, goes hand in hand with reinvigorating the residential areas around it, she said.

Monday night, the City Council will likely hear from many of the same people as it takes public testimony on zoning changes that would increase the housing density in about 360 acres of the Highlands.

Their frustration runs deeper than just their pocketbooks.

"We aren't here to protect our investments. We are here to protect our homes," said Jennifer Hawton, who along with her husband, Brett, testified before the Planning Commission.

Young couples moving in

The Hawtons are signs of spring in the aging neighborhood, where young couples are moving in to fix up those older homes or to build new ones. Jennifer Hawton suggested to planners that she and her husband are exactly the ones — with their healthy salaries — that the city should want to attract to the Highlands.

The Hawtons built a new home on their roughly quarter-acre lot six years ago. Their land is too small to take full advantage of the current zoning of 10 units per acre, but higher densities typically mean higher property tax bills.

So, while the Hawtons are happy with their situation, other property owners are looking at how to combine lots to build the higher-density housing the city favors.

In order to ensure those on limited incomes can remain in the Highlands neighborhood, the city would allow a development of 80 units per acre if the new complex includes affordable housing.

The base density for what the city calls the core of this urban village is 20 to 60 units per acre and less in residential areas of the village.

Go slow plan has supporters

Despite the potential windfall from unlocking the land's full value, residents — at least those who have spoken out — want the city to go slow on their urban renewal plans. They're getting a sympathetic hearing from at least one member of the City Council

HIGHLANDS MEETING

The Renton City Council will hold a public hearing at 7 p.m. Monday on proposals to rezone a small portion of the Renton Highlands. The meeting is in the council chambers, seventh floor, City Hall, 1055 S. Grady Way. The city's Planning Commission will consider the rezoning on Wednesday.

President Randy Corman.

Corman thinks he has council support for his view that the market should dictate when the small Highlands neighborhood redevelops. He wants more time, too, to ensure the council is hearing from a majority of citizens, not just a vocal minority.

"If we waited 60 years, then waiting another year or two isn't going to hurt anything," he said.

But Keolker counters that the market or private sector hasn't improved the living conditions in those 60 years. In fact, they've gotten worse, she said. Crime plagues the area, she said, even though some residents say they're feeling safer.

"If we don't do it now, it's not going to happen for a very, very long time," she said. There are key players in the Highlands who are ready to act soon, she said, including the Renton Housing Authority that wants to rebuild its large number of low-income units.

"All the pieces are aligning to do something in a very positive way in a neighborhood that has been neglected for a very long time," she said.

A city goal for a decade

Redevelopment of the Highlands subarea has been a city goal for more than a decade. Keolker has made neighborhood revitalization a priority of her administration.

Corman's thinking tends to mirror that of the more active members of the Highlands Community Association, who favor a go-slow approach in which property owners take the lead in redeveloping their property.

The association's secretary, Inez Petersen, has rallied the neighborhood, some would say into a frenzy. Her critics like to point out she doesn't even live in the Highlands, but she says her home near Lake Washington is just minutes away. She and city officials have accused the other of providing false and misleading information to the residents to achieve their ends.

The non-voting chairman of the planning commission, Ray Giometti, seems to side with Corman, too, especially on the issue of eminent domain. In a letter to fellow commissioners after last Wednesday's meeting, he wrote that he can't support the city rezone proposal.

The Highlands' present zoning promoting positive changes, h said, and he favors "easier an more neighborhood friendly metl ods" to keep those changes movin forward. The city should beef u police patrols and enforce its code more aggressively, he wrote.

Eminent domain opposed

Had he thought that the city wa going to use its power of eminer domain, he would have refused t participate in the process, he said i an interview.

"That is a deal breaker for me he said.

But Keolker repeats what sh said in her State of the City addres She's not trying to kick anyone o of the Highlands nor is she trying t build only expensive housing. Sh wants safe housing, not housin that is deteriorating or full c asbestos.

To reach a plan to do that take time to develop with the public, sh said, and then putting the plan t work takes even more time. That why she wants to get moving.

"It's time," she said.

Dean Radford covers Renton. h can be reached at dean.radfor @kingcountyjournal.com or 25: 872-6719.

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MONDAY ▪ May 8, 2006

Life on the Highlands

Residents wonder what revitalization will mean for them

By Dean A. Radford
Journal Reporter

Nearly every city has one, a neighborhood that has passed its prime but has value for those who have nowhere else to go or want to fix up their homes.

In Renton, it's about 360 acres of the Highlands east of downtown, where a drama is playing out over what will happen to some of the poorest residents of the city.

Unlike much of the Eastside, which is simply too new to have whole neighborhoods that are ripe for redevelopment, Renton, at 105, is twice as old as Bellevue.

But Bellevue still keeps an eye on its neighborhoods and their health. It stationed a mini-City Hall in Crossroads east of downtown to bring city services closer to that older neighborhood and has worked with property owners to boost the commercial area there.

"Bellevue is in great shape. We want to keep it that way," said the city's planning director, Dan Stroh. "An ounce of prevention is sort of the approach here."

Some piece-by-piece redevelopment is happening to the west and north of downtown Bellevue, but that's typically turning a nice smaller home into a nicer, bigger home, Stroh said.

See HIGHLANDS, A6

Gary Kissel/Journal

Masaye Sado has lived in her Renton Highlands duplex since 1953. She's been fixing her home up and says she doesn't plan to move.

Revitalizing without razing

By Dean A. Radford
Journal Reporter

RENTON — Eighty-eight-year-old Masaye Sado isn't going anywhere.

She has lived in her duplex on Harrington Avenue in the Highlands since 1953.

She and her husband, Masami, raised their two children there. He died three years ago.

In recent years, she's spent thousands of dollars to fix up her home, including new plumbing, new siding, new storm doors, a new roof and new driveways on either side of her home.

In between, she volunteers at the Renton Senior Center and the Highlands Community Church.

She has made her home comfortable, even spreading out into the other unit in the duplex.

She's an example of how some homeowners are revitalizing their neighborhood as best they can.

"I don't know where I would go," she said. "I just want to stay in this house."

She doesn't favor any redevelopment that could wipe out her home and hundreds of others.

One reason is practical.

She knows there are plans to build new housing, but that could mean walking up a flight of stairs.

"People our age can't go up those steps," she said.

INSIDE

- Poor residents fear displacement from Highlands redevelopment.
- West Seattle's High Point could serve as a model for what's to come in Renton.
- Renton City Council offers the public a chance to make broader comments.

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Highlands: Built for World War II workers

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But the Renton Highlands will likely require a pound of cure, something that so far has been elusive despite years of effort by city officials to revitalize this relatively small area east of Interstate 405.

The small duplexes in the Renton Highlands were built in the 1940s to house World War II workers at the nearby Boeing plant, when what is now Bellevue was still governed out of the county courthouse in downtown Seattle.

One war town that remains — almost — is the 130-acre High Point neighborhood in West Seattle. Its government-financed duplexes were built about the same time as those in the Highlands area by the same builder, using the same plans.

Although their original purpose was identical, High Point and the Highlands neighborhood have taken vastly different paths in the 60 years since the war. High Point remained in public hands as public housing owned by the Seattle Housing Authority. Now it's undergoing an award-winning renaissance.

The original 716 worn-out public housing units are giving way to colorful townhomes, apartments and other housing that's affordable for all income levels.

High Point today is what the Highlands could look like if the vision of Renton Mayor Kathy Keolker and other key city officials for an urban village is realized. The final decision rests with the City Council, which is holding a public meeting tonight on the Highlands redevelopment.

Living in uncertainty

For now, the residents of these 60-year-old Highlands duplexes built with government funds and intended as temporary worker housing are living in uncertainty. Immediately after the war, the duplexes were sold off, to private investors as rental properties or to families who lived there.

Either through disinterest or greed or simply lack of wherewithal, many of the duplexes languished, frozen in the 1940s. Similar housing in Kirkland was torn down after the war, as were hundreds of units elsewhere in Renton.

What Renton is facing is unique in the suburbs.

"You hold it in time. It just sits," said Matt Anderson, project manager for the Heartland LLC study of the Highlands that the city is using as the factual basis for much of its thinking.

Low owner occupancy

The city of Renton estimates there are 270 single-family duplexes, triplexes and fourplexes in the North Harrington redevelopment area and roughly fewer than 37 of those are occupied by an owner.

Some of those duplexes have been restored and some are maintained by landlords as safe and affordable housing. Everyone agrees that the worst need to go, but those who favor strong property rights want the market to dictate when that happens.

Keolker wants to rezone the area that would allow for higher densities, such as townhomes and apartments with as many as 80 units. But those 80-units come with the caveat they must provide some affordable housing.

Alex Pietsch, the city's top development official, estimates that an urban village would include about 1,500 new housing units, a tripling of what's there now. About 670 would have rents affordable to all income levels, about 40 percent more than what exists now.

To reach that 1,500-home goal, someone will have to amass enough land to accommodate large-scale developments. That's why the decades of private ownership of hundreds of parcels is a problem.

"It's hard to get enough developable land to turn the tide," Pietsch said.

But Anderson, with the Heartland group, said there are many properties that will redevelop.

"The market is turning in Renton's favor," he said.

It's a last resort, but the city of Renton could use its power of eminent domain to condemn private properties, if the City Council designates the area as blighted. Condemnation has some powerful foes on the City Council and the Planning Commission.

Still, that has worried residents, especially property-rights activists who don't want a heavy-handed government telling them what they can do with their property.

The Seattle Housing Authority used its power of eminent domain in light doses to redevelop High Point and other similar neighborhoods and spent some time in court. It also had to answer to advocates for affordable housing.

So long, Sunset Terrace?

But there is land available in the Highlands, enough to kick-start a significant portion of new residences and retail areas. One option is to tear down the barracks-like Sunset Terrace, a 100-unit complex of subsidized housing that's a gateway to the Highlands neighborhood.

The roughly seven acres is owned by the Renton Housing Authority, which is seriously reconsidering the future of the nearly 50-year-old complex in its housing portfolio.

Tom Tasa, the authority's executive director, said his agency supports redevelopment. However, it has assured its tenants that it would replace all of its subsidized units in the Highlands or elsewhere in the city so there is no loss of its housing.

Still, the assurances from officials that affordable housing won't disappear from the redeveloped area don't ease the fears of those who live there. The question is the same, if they must move: "Where will I go?"

Others are more defiant. Some have lived in their duplexes for more than 50 years and raised their families in them. There's no question about their future, just a simple statement of fact. "I won't go."

They wonder whether the hoped-for revitalization of the Hi-lands Shopping Center sparked by new housing would mean living-wage jobs.

The city and some residents blame absentee landlords for the poor condition of many of the duplexes.

But many of the duplexes are well-maintained and some properties have been redeveloped already. And some landlords don't fit th stereotype of slumlords.

Last week, Sharon Bark who owns seven rental pro erties in Renton, including the Highlands, was down o her hands and knees, wash ing the kitchen floor of a three-bedroom unit.

"It's a sow's ear," she said. "I can't make it into a silk purse."

But for $895 a month, she's offering a safe, clear place to live, she said. She said she cares about her te ants and is particular abou who lives in her units. She keeping a close eye on what's happening at City Hall.

"I just want them to be fair to everyone," she said. And if she has to sell, she wants "what my place is worth."

Where the poor live

Harshly put, this part of the Highlands is a pocket poverty. Just across Edmonds Avenue Northea is a different world, newer homes that would fit in nic ly in any suburban subdivi sion.

It's the very situation t the King County Housing Authority, which owns mu of the subsidized housing the suburbs, tries to avoid Instead of concentrating low-income housing, in effect creating ghettos, it tries to disperse its housir throughout a community.

Among its programs is one that has preserved fou apartment complexes in Bellevue and Redmond th provide 271 units of subsi dized housing for qualifyi families. It also made hist with its transit-oriented T Village at Overlake Statio which is 308 units of work force housing at Redmon transit center.

In south King County, i biggest complex is the Springwood Apartments i Kent, which has 342 units.

The agency has never used its condemnation po ers, said spokeswoman Rhonda Rosenberg.

Dean Radford covers Renton. He can be reached dean.radford@kingcounty journal.com or 253-872-67

Article published Jun 24, 2006

Highlands residents fight against city's plans: Some fear Renton will use eminent domain to make them leave

By Jamie Swift
Journal Reporter

RENTON — City Councilman Randy Corman can empathize with residents of the Highlands who are fearful the city will condemn their homes to develop a high-density urban village intended to reinvigorate the area.

Corman, the council president, stood side-by-side on a busy street corner Friday afternoon with a group of Highlands residents waving "no eminent domain" signs.

"The mayor tried to take my house," Corman said.

Mayor Kathy Keolker was a city councilwoman in 1989. That year, the council tried to condemn Corman's Highlands home — the same home he lives in now — to clear the way for a new development.

After a court battle, Corman won and was able to keep his home. But he says he'll never forget the frustration and the intimidation of challenging government.

Corman was so disturbed by the situation that in 1991 he decided to run for the City Council. He targeted Keolker, because "of the pivotal role she took in condemning my property," he said.

Keolker held on to her seat, but Corman would grab a spot on the council in 1994.

On occasion, Corman said, he'll say to his wife that he should work harder to cooperate with Keolker.

But his wife always responds: "But she tried to take our house," Corman says, with a chuckle.

"That's the back story," Corman said. "That's what set up this whole grudge match."

The mayor was out of the office Friday and could not be reached for comment but the city's vision for the Highlands is to transform a neighborhood, which is dotted with blighted homes, into an urban village. To that end, the city is trying to increase the housing density.

However, an appeal lodged by the Highlands Community Association puts the city's vision on hold, at least until the fall, said Alex Pietsch, the city's administrator of economic development, neighborhoods and strategic planning.

Pietsch said Friday the city has always talked about eminent domain as "a last choice after all other strategies have been exhausted."

He said the belief that the city is likely to condemn properties is "being perpetuated by people who have their own agendas."

The residents believe they are in the path of the city's vision for a renewed urban village in the Highlands, near Sunset Boulevard Northeast, just east of Interstate 405. And they are concerned the city will use eminent domain powers to make them leave.

Corman estimates the city is unlikely to use eminent domain to build its urban village, considering the current makeup of the City Council.

At least four of the seven council members are against using eminent domain, Corman said Friday — which marked the one-year anniversary of the U.S. Supreme Court's Kelo V. New London decision, which broadened governments' eminent domain rights.

In response to that year-old decision, President Bush on Friday signed an executive order declaring the federal government can only seize private property for a public use such as a hospital or road.

Last month, Corman pitched a resolution to the City Council which would have eliminated the possibility of using eminent domain powers in the Highlands neighborhood.

"I was essentially filibustered," said Corman, adding that council members unwilling to commit to such a step used government process to avoid a vote on the resolution.

Until the city eliminates eminent domain as an option, the Highlands residents will live in a constant state of anxiety, Corman said.

"It's like taking months away from their lives," Corman said.

"As soon as you realize how many rights have to get trampled to do this, you should realize you need to do the hard work of finding another idea," Corman said.

Jamie Swift can be reached at jamie.swift@kingcountyjournal.com or 253-872-6646.

Article published Jun 28, 2006

Renton backs off Highlands threat: Mayor says by not using power of eminent domain, progress could be slowed

By Dean A. Radford
Journal Reporter

RENTON — In a retreat from what some residents saw as threats to condemn their private property, Mayor Kathy Keolker is recommending that the marketplace become the driving force behind redevelopment of an aging part of the Highlands.

However, not using the city's power of eminent domain under the state Community Renewal Act could slow the progress toward a healthier and safer neighborhood, she argued, with less public money available for the job.

It's a course that some on the council favor and certainly one that citizen activists with a strong belief in private property rights support.

Rarely, if ever, have city officials — and the community — faced such an emotionally charged issue as revitalizing the Highlands.

It has soured some relationships within the council, the mayor and some of the people they represent.

"We just need to take a break," said Keolker, who said she's saddened by the situation she faces.

"The vision is good. The goal is good. We can't get there right now," she said.

The use of the city's power to condemn property became a rallying point for some neighborhood activists, even though the city offered assurances it would only use such power as a last resort and only to protect public health and safety.

Without a plan for Highlands revitalization in which the city is a major player, Keolker said, it's unlikely she would recommend spending the $1.5 million the council has set aside for street, sidewalk and stormwater improvements there.

Her recommendations are now before the City Council, which include working with the Renton Housing Authority to redevelop its affordable housing.

And the city would continue to "vigorously pursue" violations of city codes involving "unsafe, unhealthful, derelict or nuisance properties," she wrote the council.

Keolker has asked the council to still pursue the concept of an urban village for about 360 acres of the Highlands near the Hi-Lands Shopping Center off Sunset Boulevard just east of Interstate 405.

Through new zoning yet developed, the city would increase the housing density in the Highlands area, helping to spark economic development, while still providing affordable housing.

The housing there now — some single-family homes but mostly duplexes and triplexes — was built about 60 years ago to temporarily house World War II workers at the Boeing plant in Renton and their families.

Keolker has taken the brunt of the criticism from those Highlands' activists who say the city is being heavy-handed in its drive to redevelop the neighborhood.

She points out that this is the city's policy — not hers — and the City Council told her to act boldly and aggressively in the Highlands.

The council was 100 percent behind the policy, but that support has waned, in part because of misinformation spread by neighborhood activists, she said.

Those scare tactics, Keolker said, have prevented a discussion about affordable housing for those on lower incomes who live in the Highlands.

Prominent among those activists is Inez Somerville Petersen, the secretary of the Highlands Community Association. The group, she said, was to lay out its next moves Tuesday night at a board meeting, but she said they won't drop their appeal of land-use decisions the city has made in the Highlands.

She denies spreading misinformation either at City Council meetings or through her numerous e-mails. Her information, she said, comes from official city sources.

To understand Keolker's message, Petersen said, you have to read between the lines.

"The declaration of blight is taken off the table, but only temporarily," Petersen said. She points to a line in Keolker's letter:

"In time, we may find that some of our original ideas will become necessary to bring about widespread improvements," Keolker wrote.

To Petersen, that means that Keolker "is not really conceding anything here."

It's too early to say how property owners and prospective developers will respond to redoing the neighborhood. But ultimately the city may have to step in "unless some miracle occurs," Keolker said. "You can always hope for miracles."

Angering Petersen, too, is the loss of the city's official recognition of the association because she lives along Lake Washington, not the Highlands. It's city policy that board

members of its neighborhood associations actually live in the neighborhood.

"She (Keolker) has tried to buy herself some time to get her own cronies in a housing association that will go along with her ideas," Petersen said.

Keolker said there are plenty of Highlands residents who support revitalization, some of whom don't like the direction the Highlands association has taken or its political activism.

"We would like to have a positive relationship with the people who live in the Highlands," she said.

Keolker won't place a deadline on when she wants to see real progress in the Highlands, something, she said, that might look like an "implied threat."

And Petersen said "there is no timeline on private property rights."

Randy Corman, the council's president, said from his viewpoint there is no timeline to get things done in the Highlands by the private sector. However, redevelopment will occur and some residents will fix up their homes.

"We won't be able to force it," he said.

Dean Radford covers Renton. He can be reached at dean.radford@kingcountyjournal.com or 253-872-6719.

SEATTLE POST-INTELLIGENCER
http://seattlepi.nwsource.com/opinion/275678_kelo29.html

Keep Kelo out of Renton Highlands

Thursday, June 29, 2006

MICHAEL BINDAS
GUEST COLUMNIST

Don't worry, eminent domain abuse can't happen here. ... I promise.

A year ago last Friday, the U.S. Supreme Court issued one of its most reviled decisions. In Kelo v. City of New London, the court held that government may use eminent domain to condemn homes and small businesses not only for true "public uses" but also for purely private development.

With the Supreme Court's go-ahead, politicians and their developer cronies went on a nationwide condemning spree. Since Kelo, there have been more than 5,750 filed or threatened condemnations for private development.

Like most Americans, Washingtonians were outraged by Kelo and its aftermath. They demanded the Legislature act to prevent eminent domain abuse here.

Initially, legislators seemed to take heed. They floated proposals, even held hearings.

Guess who showed up? Lobbyists for municipalities and city planners.

Guess what their line was? "Washington isn't a Kelo state. It can't happen here."

The Legislature did nothing, the session ended and here we are -- in Renton, where recent events demonstrate that the legislators were taken.

Renton Mayor Kathy Keolker doesn't like being leader of a city with a working-class image. Instead, she has a "vision" of an upscale "urban village." She planned to make that vision a reality by leveling the homes of her working-class constituents.

For the past several months, Keolker has been preparing to use Washington's Community Renewal Law to clear out the Renton Highlands. Adopted in 1957 during the "urban renewal" fad, the law authorizes cities to condemn homes in supposedly "blighted" neighborhoods and turn the property over to private developers.

It doesn't matter whether the homes are actually blighted. Under the law, the city may use eminent domain because of neighborhood conditions that are exclusively the city's responsibility, such as "inadequate street layout."

The mayor was all set to use the Community Renewal Law when the courageous efforts of Highlands residents, along with increased scrutiny brought about by the Kelo anniversary, caused her to take a step back. On Monday, she explained she would not use the law "at this time."

Keolker's overture is cold comfort to Highlands residents. She insists eminent domain may still "become

necessary," adding that she is "happy to revisit" the issue. Worse, she blames Highlands residents for derailing her plans, claiming they "employed mischaracterizations, exaggerations, and scare tactics that distort the intent of some of the city's concepts." Really?

In a timeline made public earlier this year, Keolker detailed her "vision" for redeveloping the Highlands. Dubbed "Outline of Implementation Timing and Steps," it noted that a study "needed to support a declaration of blight" was "nearly complete" and that the declaration, along with "plans for ... housing relocation and replacement" would be submitted to the City Council by July 31. By 2007, the city's "Development Partner" would initiate the "first redevelopment project(s)."

Understandably worried about the fate of their homes, residents voiced concern. The mayor's response? Accuse them of "scare tactics."

Citizens shouldn't have to endure government threats and abuse for simply wanting to keep their homes. They deserve, and the Constitution demands, more.

Keolker owes her constituents an apology. Swearing off eminent domain for private development would be a start.

Until then, though, don't worry. Washington isn't a Kelo state. I promise.

Michael Bindas is a staff attorney with the Washington Chapter of the Institute for Justice, which represented the homeowners in the Kelo case. For more information, visit www.ij.org.

KING COUNTY
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THURSDAY ▪ June 29, 2006

Highlands offers to work on neighborhood with city

By Dean A. Radford
Journal Reporter

RENTON — The Highlands Community Association struck a conciliatory note in a letter to Mayor Kathy Keolker on Wednesday, offering to work together to revitalize their neighborhood.

The letter was in response to a memo Keolker presented at Monday's City Council meeting in which she said she will recommend the city not use its power to condemn property to create an urban village in the aging part of town.

Keolker and some association members, especially its secretary, Inez Somerville Petersen, have had some tense standoffs at council meetings over the city's pursuit of an urban village — and perhaps the use of its power of eminent domain.

In his letter, approved by the association's board, Terry Persson wrote:

"By shelving the threat of eminent domain, the city and the community can now move forward on several positive fronts to achieve what I believe is a shared vision for a safe, healthy, vibrant and affordable Highlands community."

He titled his letter, "Burying the hatchet."

In an interview, Persson agreed that discussions with city officials got heated.

"We really didn't want to see that happen," he said. "We wanted to work with them as a team."

He said the city was taking a top-down approach to laying out a plan for the Highlands, rather than one relying on residents' opinions. However, the city has offered numerous opportunities for public input in the Highlands.

Keolker was unavailable for comment Wednesday.

In her memo to the council, Keolker wrote that "many residents and property owners have galvanized around a desire to clean up their own neighborhood, but they want to do it on their own terms."

Keolker and the city's chief administrative officer, Jay Covington, were in Washington, D.C., talking with financial institutions about the millions of the dollars in bonds the city will sell to finance roads, utilities and other infrastructure to support The Landing, a major new development in north Renton.

However, Alex Pietsch, the administrator for the city's Department of Economic Development, Neighborhoods and Strategic Planning, said the city will talk with any residents "who are interested in bringing about the revitalization of that neighborhood."

For years, the city has considered an urban village for about 360 acres of the Highlands near the Hi-Lands Shopping Center on Sunset Boulevard just east of Interstate 405. Some of the World War II-era temporary housing there is in desperate need of repairs.

The Highlands association has offered to help look for money to assist low-income residents in making repairs or improvements, to identify violators of city codes and to help establish zoning that encourages redevelopment, but preserves the landowner's rights.

The association is no longer officially recognized by the city, but whether that might affect how involved it can get in official business in the Highlands is unclear.

But Persson points out that the association has about 350 members and he said it's recognized by many as the voice of Highlands residents in that area.

In his letter to Keolker, Persson wrote that Highlands residents are already reroofing, painting, cleaning up yards and planting flowers.

Dean Radford covers Renton. He can be reached at dean.radford@kingcountyjournal.com or 253-872-6719.

SEATTLE POST-INTELLIGENCER
http://seattlepi.nwsource.com/local/lovi22.shtml

Bremerton woman just won't budge

Grandmother is fighting condemnation of her home

Monday, November 22, 1999

By GORDY HOLT
SEATTLE POST-INTELLIGENCER REPORTER

BREMERTON -- On the street where Lovie Nichols lives, she is alone now.

The homes and yards where neighborhood children once played and gardens grew have been bulldozed. Now, there are just acres of dirt, fenced off by the city.

Nichols should be long gone, too, but she refused to move even when the city condemned her home and 21 others in 1996 to make way for a sewer plant expansion.

As her friends and neighbors took the city's buyout offers, Nichols balked.

"Remember Rosa Parks?" she asks, recalling the civil rights pioneer who in 1955 refused to move to the back of a Montgomery, Ala., bus.

"She wouldn't get up. Well, I won't, either. I'm not moving."

Even an eviction notice a year ago did not change Nichols' mind. What the 75-year-old grandmother has since learned is that three days before the notice was sent, the city sold her property as part of an 11-acre land deal to a nearby Bremerton car dealer.

The dealer, Rodney Parr, agreed to pay almost $2 million for the land, including Nichols' parcel.

Parr and city officials insist they have done nothing wrong. The land swap, says the city, evolved over years of wrangling about the future of the sewer plant.

But Nichols' Silverdale lawyer, Ron Templeton, says the city demolished a neighborhood and then sold it as a way to generate badly needed tax revenue.

Court records show the city spent about $3 million for the land and expects to earn more than $17 million over the next 20 years in new property and sales taxes.

Nichols says it is wrong of the city to try to force her from the home she helped build with her late husband, Floyd, back in the 1950s. He was a shipyard electrician with a talent for fixing things, and put his special touch to everything he built.

"This is the biggest investment we ever made."

The city has made a big investment in the neighborhood, too, but for different reasons.

Initially, it wanted to get rid of the homes near state Route 3 as a way of dealing with a long-simmering and expensive odor problem at its nearby sewage plant.

The facility had been expanded in 1985 without odor-scrubbing equipment, and by the early 1990s the city was under fire from residents.

Two community groups totaling more than 300 residents raised such a legal ruckus about the stink that the city eventually settled damage claims worth more than $9 million.

At the same time, Bremerton was fighting with the Puget Sound Air Pollution Control Agency over smells from the plant. It lost that battle, too, and was forced to spend $5.5 million on equipment to take some of the stink out of the plant's emissions.

At about the same time, tax revenue from retailers was flowing out of town to Silverdale, where the Kitsap Mall had opened.

Through it all, Nichols never budged. She did not want to move.

But nobody, least of all city officials, counted on her resolve nor on the resourcefulness of her attorney.

Nichols' legal maneuverings have left the city in a bind and auto dealer Parr in a quandary. Parr's agreement to buy the land requires that Nichols' house be torn down. In its place would be a drainage pond needed for the car lot for the car lot Parr wants to build.

"It's kind of one of those things that, every time you look at it, something else is goofy," Parr said.

"I think Mrs. Nichols has had some poor counseling along the way. But I can certainly relate to it because of my own parents, who lived in one place for 50 years and just didn't want to move no matter when it came time."

But it's not Nichols' time.

"This is my home," she said. "My only home."

Templeton, a land-use attorney whose clients are mostly developers and bankers, took up Nichols' cause after she balked at her original attorney's recommendation to accept the city's $135,000 offer.

"At first I said 'no,'" he said. "But then she laid her head on my desk and said she'd be evicted if somebody didn't help. I thought, well, isn't this really what I went to law school for?"

Templeton said he never would have taken a case "just about money."

"But what the city has tried to do here is wrong, and if they get away with it, they will be able to take any property at any time for any reason," he said.

Not so, says City Attorney Glenna Malanca.

"As we see it," Malanca said, "the big ol' city didn't take advantage of anybody."

But, she added, "there is a muddy, muddy history here. Things were done and said over a very long

period of time. The question is, was it done legally? We think it was."

Seldom popular, condemnation proceedings give governments a way to seize private property for the public good -- a new highway, a school, an airport runway -- while paying a price agreed to by both sides.

In Bremerton's case, the city said it would use Nichols' neighborhood for future sewage-plant expansion and as an "odor buffer" should smells persist.

"But you can't then turn around and not use it for that purpose, (and) instead resell it to a private interest in an attempt to make money on the deal," said Nichols' lawyer Templeton. "That's what the city of Bremerton has tried to do."

After failing to sell that argument to Kitsap County Superior Court Judge Jay Roof earlier this year, Templeton took Nichols' challenge to the the state Court of Appeals where he and Malanca argued the case last month A decision from the three-judge panel is expected before year's end.

Templeton may have more ammunition this time, he said.

"What Judge Roof didn't have," Templeton said, "was the city's purchase agreement with the Parr people. The city was on solid ground as long as it used the property it took for public use. They got themselves into trouble when they turned around and sold it to Mr. Parr, and then got him to sign a hold-harmless agreement over the odor problem.

"If all they needed was a promise not to sue (over the smell), they could have gotten that from Mrs. Nichols without taking her property."

Complicating the city's case, according to Templeton, are statements made in 1995 by Bremerton Mayor Lynn Horton, in The Bremerton Sun. Her comments appear to contradict the city's most recent comments about its rationale for needing the property, according to Templeton.

In the Sun's March 7, 1995, edition, Horton is quoted as saying the city hopes to "recoup some of the initial (treatment-plant mitigation) costs by reselling parcels (of the condemned land that the city) won't need for plant expansion, and dedicating property and sales taxes generated by those parcels after resale to repay the city's investment."

In short, the condemnation would become a revenue generator for a city in dire financial straits since 1985, when much of its retail and commercial core moved north to Silverdale.

Malanca acknowledges the city's financial position on that score, but insists the condemnation was no scam.

"What the city actually did do may not have been done the way Mr. Templeton would have done it, or even in the best way possible," she said. "But that is not really relevant to the determination now before the court."

It is clearly relevant to Lovie Nichols.

"If I would die tomorrow, I'd go off and leave this, of course," she said. But "I want to enjoy it while I'm here."

Indeed, Nichols and her late husband spent half their lives here.

"Back in the 1950s," she said, "Floyd tried to rent one of these little houses up the block. But he was told, as they used to tell people then, that they don't rent to no coloreds.

"So a few years later he bought four little houses and tore three of them down and built the rest of this one. Look!"

She pointed to the ceiling. "Here's where the new part starts. Everything's built-in, the cabinets, these book cases. Everything. Even the stereo here."

But the pride of Nichols' home, still, is tucked behind a door she will open only for special guests.

"Look, here," she said, flipping a switch.

Revealed was a miniature city in a tangle of tiny railroad tracks just the way Floyd left them nearly eight years ago.

"N-gage," she said, referring to the railroad's tracks. "I had to learn all that. These trees? I made them. We worked on it together. This control panel? We had to move it up here when my grandson was little."

A carefully arranged console of trays, expertly labeled, conceal a multitude of train and village parts. Model train books and magazines line the shelves. No inch is vacant.

"I haven't had the heart to get in here and do anything," she said. "But I will, one day I will."

P-I reporter Gordy Holt can be reached at 206-448-8156 or gordyholt@seattle-pi.com

SEATTLE POST-INTELLIGENCER
http://seattlepi.nwsource.com/opinion/lovied.shtml

Go, Lovie Nichols! City's act hateful

Tuesday, November 23, 1999

SEATTLE POST-INTELLIGENCER EDITORIAL BOARD

Bremerton's sewage treatment plant has a well-earned reputation as a smelly place. But what really stinks is the city's condemnation and resale of the nearby home of 75-year-old Lovie Nichols.

As the P-I's Gordy Holt reported in Monday's Post-Intelligencer, the city has exercised the power of eminent domain to take Nichols' home, not for the sake of the public good but to turn a quick profit on a crass real estate deal.

The Nichols eviction is the latest stink in the malodorous history of the city's sewage treatment plant on state Route 3, just up the hill from Sinclair Inlet and a stone's throw from the Puget Sound Naval Shipyard where Nichols' late husband, Floyd, worked.

After failing to install odor-scrubbing equipment during a 1985 expansion of the plant, Bremerton paid more than $9 million in damage claims to 300 nearby residents. The city also was forced by the Environmental Protection Agency to install $5.5 million worth of new equipment in an attempt to minimize the smell.

One way the city tried to dissipate the public dismay over the plant's smell was to buy the houses of folks nearby. The logic seemed to be that those who don't live by it wouldn't complain. But there was apparently another motive. Mayor Lynn Horton was quoted in 1995 saying that the city hoped to turn the condemned land for a quick profit and a long-term gain through increased property and sales taxes from the new owners.

The government in this case is not literally "taking" Nichols' property. It has offered to buy it. But Nichols has turned down the offer. She doesn't want to move.

Indeed, the city has already made a deal to tear down Nichols' house and sell the condemned land to a car dealer for a sales lot. To get the property, the dealer had to promise not to sue the city over the smell. Nichols' attorney Ron Templeton said no such offer was made to her, and if it had been she would have accepted.

The city did not condemn the property with the traditional intent of putting it to such public use as a road or a school or open space. This risks carrying the concept of "highest and best use" to a bizarre new level. The city apparently believes that government should be able to take away your property and sell it to someone else who would put it to what government deems a better use -- one more lucrative to government.

Ultimate resolution of the legal issues rests, as it should, with the courts. But the jury's in on the moral issue in this case. Shame on Bremerton city officials for trying to run a 75-year-old woman (or anyone else, for that matter) off her land so they could hustle it to a higher bidder and reap the windfall.

A run of bad luck and bad decisions may have left Bremerton in financial straits; but using Lovie

Nichols as a pawn to pump up the city coffers is disgraceful.

SEATTLE POST-INTELLIGENCER
http://seattlepi.nwsource.com/local/lovi07.shtml

Woman loses court appeal in fight to keep home

Court rules against Bremerton widow, 75

Tuesday, December 7, 1999

By GORDY HOLT
SEATTLE POST-INTELLIGENCER REPORTER

A 75-year-old widow whose property was condemned by the city of Bremerton, then sold to an auto dealer, has lost another round in her battle to keep her home.

A state appeals court has ruled for the city of Bremerton, which condemned Lovie Nichols' property along with the property of 21 other homeowners.

The decision, by judges Robin Hunt, Dean Morgan and Elaine M. Houghton, was unanimous. But it will be challenged, promised Nichols' Silverdale attorney, Ron Templeton.

"I have 20 days to file for reconsideration pointing out the errors we believe they made," Templeton said. "And if that doesn't do it we'll go to the (state) Supreme Court."

Nichols, whose husband built their home more than 40 years ago, expressed disappointment, but vowed to continue her fight. She has continued to live in the home during the court battle.

"If they can do this to me, they can do it to anybody," she said. "I do have supporters and they are very, very, very upset over this. I don't want to start a riot, but all I have to do is say the word."

The court never got to the basis of Nichols' claims, rejecting them simply because she and her lawyer had not filed an appeal within time constraints.

When the condemnation order went into effect on Sept. 19, 1996, Nichols had 30 days to appeal, but did not do so. Her attorney said she did not appeal because she didn't know then that the city would sell the land to a private party. The sale of 11 acres to car dealer Rodney Parr was not disclosed until August of 1998.

In the ruling, the judges wrote that Nichols had "failed to preserve her right to challenge the constitutionality of the city's action" because she had failed "to file a timely, direct appeal from the condemnation order."

Bremerton City Attorney Glenna Malanca said the case Nichols' lawyer put together failed simply for its lack of merits.

"He took little parts that wrapped up his side of it but it didn't add up to squat," she said. "It's the narrow view of condemnation."

Malanca said courts across the country and in this state have upheld an "extended" view of such eminent domain seizures, which allow the public to take private property for public use (a school, a road, or other

such facility for which the public gains) even when that property is later sold to a private developer or leased for a private purpose.

She pointed to urban-renewal efforts in which a government seizes slums and turns them over to private parties for redevelopment.

Templeton said courts prohibited the taking of more property than is needed for public use "even if no private use is contemplated."

In Bremerton's case, Malanca said, the Nichols matter comes at the end of a long process in which the city attempted to reduce its legal liability, and thus produce a public gain.

The whole mess started when the city got into legal trouble over odors from a sewage-treatment plant built in 1985 without odor-scrubbing equipment. Two neighborhood groups sued in separate cases, collecting $9 million in damages. Then the Puget Sound Air Pollution Control Agency took the city to task requiring that it build a smell scrubber -- a $ 5 million hit.

Malanca said the $9 million neighborhood settlements didn't include prohibitions against future lawsuits by these same neighbors. The city could not get every neighbor to sign an odor easement.

"We had property that was creating millions and millions of dollars in financial liabilities not only because of odor claims but also because of legal expenses," she said.

The city had agreed to pay Nichols $135,000 for her house, and in August, 1997, she agreed verbally in Kitsap County Superior Court. She had second thoughts and fired her original attorney. She tried to nullify her decision on her own but was refused by the court.

Parr has agreed to pay Bremerton $1.99 million, and give the city the odor easement it has long sought.

SEATTLE POST-INTELLIGENCER
http://seattlepi.nwsource.com/opinion/lovied1.shtml

Ruling is not justice

Wednesday, December 8, 1999

SEATTLE POST-INTELLIGENCER EDITORIAL BOARD

Lovie Nichols has lost her most recent legal skirmish in her fight to keep the city of Bremerton from forcing her out of her home. The state Court of Appeals ruling may have bolstered the city's legal standing, but not its moral one.

The appellate court ruled not on the merits of the case but on a technicality. The 75-year-old widow did not file her appeal to the Sept. 19, 1996, condemnation order within the legally required 30 days. Part of that stems from the fact that it was not disclosed until nearly two years later that the property on which Nichols' house has stood since her husband built it 40 years ago, would be resold by the city to a private auto dealer.

(Key to the deal with the dealer is his granting an "odor easement" to the city because Bremerton's stinky sewage treatment plant is near the property.)

Nichols' attorney says he plans to appeal the decision but the law is, apparently, the law, and deadlines are deadlines. We would like the Supreme Court to examine the propriety of condemning a widow's home so that government can transfer it to another private party, which could produce more taxes for government.

Because that hearing appears unlikely, we would urge the city of Bremerton to redouble its efforts to reach a fair and gentle settlement with Lovie Nichols, including reasonable resettlement costs.

The city's legal stance may hold sway, but the city's moral position, to borrow City Attorney Glenna Malanca's genteel phrase, doesn't "add up to squat."

SEATTLE POST-INTELLIGENCER
http://seattlepi.nwsource.com/local/lovi23.shtml

Court asked to reconsider in home condemnation case

Thursday, December 23, 1999

By GORDY HOLT
SEATTLE POST-INTELLIGENCER REPORTER

The attorney for a 75-year-old widow whose home was condemned by the city of Bremerton, then sold to a car dealer, has asked a state appeals court to reconsider its Dec. 3 decision favorable to the city.

Attorney Ron Templeton of Silverdale said the court's ruling missed the point. Had the city kept Lovie Nichols' home for public use as promised, she would have no case, he said.

But the city reneged when it sold the property in an 11-acre package to car dealer Rodney Parr, Templeton said.

"Had the city been truthful and disclosed the actual use the city now makes of (Nichols') property," a lower court would have had no choice but to give Nichols back her home of nearly 50 years, Templeton said in his motion for reconsideration.

Nichols, a grandmother, lost her house in 1996 when it and 21 others were condemned to make way for a sewage-treatment plant expansion. The condemnation came after the city lost two costly damage suits brought by neighbors of the sewage plant who objected to the its smells.

About the same time, the city also lost its battle with the federal air-quality agency and was required to install expensive odor-scrubbing equipment.

Along the way, Bremerton Mayor Lynn Horton voiced support of a plan to condemn the neighbors' property as a way to prevent future lawsuits, and to recoup city losses by selling the land to tax-generating commercial interests.

Horton retreated from that position after city attorneys said the scheme would be illegal.

That counsel apparently was forgotten two years later in the deal the city struck with Parr.

But appellate court judges Robin Hunt, Dean Morgan and Elaine Houghton never got to that issue when Nichols' petition reached their court. They said simply that Nichols, who was without a lawyer at the time, had missed a 30-day lower-court deadline, and thus had no standing in their court.

P-I reporter Gordy Holt can be reached at 206-448-8156 or gordyholt@seattle-pi.com

Northwest Briefing

Saturday, January 29, 2000

BREMERTON

Court won't reconsider homeowner Nichols' case

A state appeals court has refused to reconsider the case of a woman whose house was seized by the city of Bremerton, then sold to a local car dealer as part of a real estate package designed to raise revenue for the city.
The court made its decision known in a one-line response to Silverdale attorney Ron Templeton, who represents the homeowner, Lovie Nichols.

"This was one I thought they just might take a second look at," Templeton said yesterday, "but it didn't happen."

Templeton said he now will seek a review before the state Supreme Court. His deadline is Feb. 12.

Nichols, a 75-year-old Bremerton grandmother, lost her home of nearly 50 years in 1996 when 22 houses were condemned to make way for a sewage-treatment plant expansion.

City lawyers said the move was illegal; however, two years later, the city sold Nichols' property in an 11-acre package to car dealer Rodney Parr.

FEDERAL WAY

Road closed after teenager dies in a single-car crash

Seattle
Eastside
South King
N. King / S. Snoh

More search optic

LOCAL HEADLINES

Southwest Dash Point Road was closed for hours yesterday after a Milton teenager died in a single-car crash.
Charles J. Lloyd, 19, died from injuries suffered in the 4:15 a.m. accident. Another occupant of the vehicle -- Jeff K. Lewis, 20, of Fife -- suffered minor injuries.

The cause of the accident is under investigation, police said.

BELLINGHAM

State likely to take action against Olympic Pipe Line

The Department of Ecology will likely take some enforcement action against Olympic Pipe Line Co. over a badly maintained pump that allowed gasoline-contaminated water to seep into Bellingham's Whatcom Creek.
Olympic installed the system after the June 10 rupture of the company's pipeline in Bellingham to treat contaminated groundwater. The pump's filters became clogged with sediment on Nov. 17, allowing the seepage, said Ron Langley, an Ecology Department spokesman.

Department officials noticed the problem Nov. 18 and ordered it corrected. Langley said it's not clear how much contaminated water got into the creek.

The Cascade Columbia Alliance, an environmental group, criticized the Ecology Department, questioning why it is has not taken action.

But Langley said the department will take some sort of enforcement action against Olympic.

ISSAQUAH

Woman gets 3-year term in death of her boyfriend

An Issaquah woman was sentenced to more than three years in prison yesterday after pleading guilty to the manslaughter of her boyfriend. Christine Abbott, 36, cried and leaned on her lawyers during her sentencing yesterday before King County Superior Court Judge Charles Mertel.

Abbott had originally been charged with second-degree murder, but in a deal with prosecutors she agreed to plead guilty to second-degree manslaughter in the death of James Palomares, 40.

Palomares died on Christmas Day 1998 from a stab wound to his back, court papers said.

Neighbors told police the couple had been fighting.

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· Green Peter Reservoir has a
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OLYMPIA

Quinto, Lucky For Life to add Monday drawings

Lottery players will have another day to win money when drawings for Quinto and Lucky For Life expand to Mondays beginning this Monday. Quinto and Lucky for Life will continue to be held Saturdays and Wednesdays, as well.

As a bonus, Monday drawing players will have chances to win one of five $1,000 prizes each week during a promotional period that runs through March 21.

Players can receive a bonus ticket for a chance to win one of five $1,000 prizes that week.

A total of $40,000 will be awarded during the promotonial period.

OLYMPIA

Judge upholds law to add a second Narrows Bridge

A Thurston County Superior Court judge yesterday upheld the controversial law that will permit construction of the $400 million second Tacoma Narrows Bridge and charge $3 tolls on it. But the legal fight isn't over.
The ruling upholding the state highway public-private partnership law, made from the bench by Judge Daniel Berschauer, was expected by state officials.

But the group's attorney, Shawn Newman, plans to appeal the decision to the State Supreme Court as soon as March 1.

The law, passed by the Legislature in 1993, permits the state to enter partnerships with private developers to build roads or bridges.

It also allows the private entity to charge tolls to pay back their investment, although the state continues to own each project.

P-I Staff and News Services

Northwest Briefing

Tuesday, July 18, 2000

Widow will lose her home, land after all

BREMERTON -- Lovie Nichols, the 75-year-old Bremerton widow who appealed to the state Supreme Court after losing her home in a land deal between the city and an auto dealer, will have to move after all, her Silverdale attorney said yesterday.
"I got the court's letter today," Ron Templeton said. "It simply said our petition for review had been denied. That was it. No explanation."

Nichols, who could not be reached for comment yesterday, became part of a condemnation proceeding that gobbled up 21 other west Bremerton homes, initially to provide an odor buffer for the city's sewage-treatment plant.

Before long, however, the city found it did not need all the land it had condemned and sold part of it -- including Nichols' home of more than 40 years -- to car dealer Rod Parr.

Boy rides bicycle into street, killed by truck

EVERETT -- An Everett boy was killed yesterday morning when he rode his bicycle into the path of a pickup truck.
Thomas J. Washington, 12, was hit by a 1996 Ford F250 truck on Puget Park Drive at about 11:30 a.m. when he failed to stop his bicycle at a stop sign on 55th Drive Southeast.

The boy was rushed to Harborview Medical Center, where he was listed in critical condition on arrival, the State Patrol said. He died later.

The driver of the truck, Mihkel L. Popp, 37, of Snohomish, did not have time to stop when the boy's bike rolled out in front of him, the State Patrol said.

Police ask for help in locating woman

LOCAL HEADLINES

BOTHELL -- Bothell police are asking for assistance in locating a 34-year-old Bothell woman missing since June 9.
Kim Marie Wheeler was last seen at 9 p.m. that Friday, driving toward Bothell on state Route 9 in her blue 1986 Ford Taurus station wagon with Washington license plates 185-CFA.

Wheeler's disappearance is being treated as suspicious.

If you have information, please call 425-486-1254.

An old score settled in climb up Rainier

MOUNT RAINIER -- Patricia Peterson, 62, became the oldest American woman on record to reach the summit of 14,411-foot Mount Rainier.
Saturday's climb settled some unfinished business for the Boulder, Colo., woman. She first tried to reach the top 48 years ago at the age of 14 but had to turn back because of poor weather.

And the trek had a philanthropic bent. Peterson raised more than $3,000 for the American Lung Association of Washington as part of its "Climb for Clean Air" fund-raising effort.

Pedestrian is killed in Auburn hit-and-run

AUBURN -- A 58-year-old man was killed early yesterday morning when he was struck by a speeding car.

Arizona Robert Lemore was hit in a crosswalk in the intersection of Auburn Way South and Dogwood Street Southeast. The impact threw Lemore 150 feet into the air, Auburn police officials said.

After hitting Lemore at 2:47 a.m., the car sped away.

Auburn police are still looking for the vehicle, a small, dark-gray car probably made in the late 1970s or early '80s, with significant damage to the front end on the driver's side.

If you have any information about the vehicle or the accident, call Auburn police at 253-288-3156.

Fire causes $300,000 of damage to homes

SEATTLE -- A fire at a Queen Anne home late Sunday night caused $300,000 of damage, including fire damage to the roof of the house next door.

The fire, caused by a barbecue on the first-floor deck of the two-story home, began shortly after 11 p.m., said Sheila Strehle, spokeswoman for the Seattle Fire Department.

All the occupants were able to escape without injury.

Firefighters were able to put out the fire at 507 W. Galer just before midnight, but not before it had damaged the house next door.

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· Green Peter Reservoir has a
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No one in that house was injured, and the damage was not severe enough to keep the neighbors from staying at home.

P-I Staff and News Services

SEATTLE POST-INTELLIGENCER
http://seattlepi.nwsource.com/opinion/294418_buriened.html

Property Rights: A city's limits

Monday, December 4, 2006

SEATTLE POST-INTELLIGENCER EDITORIAL BOARD

The Washington Supreme Court could add some clarity to the law regarding government condemnation of properties. Better yet, the court might even provide individuals greater protection against unfair uses of government's power to condemn and take homes and businesses.

A court panel could decide as early as Tuesday whether it will hear an appeal from the Strobel family, owners of the land and building for a long-time Burien restaurant, Meal Makers. The case turns on how much power courts have to review municipal decisions to condemn private property.

A King County Superior Court judge and a state appeals court have sided with the city. But Superior Court Judge Michael Heavey laid out the issues, suggesting in a thoughtful oral decision last year that the city action might have been so "unnecessary and unreasonable as to be oppressive."

Heavey said the case record suggests the city and a private partner in a planned town center think "Meal Makers is inconsistent with their vision of what should happen there. I think they would feel it would be akin to having a Denny's restaurant next to the Capitol building in Olympia." Evidence from one source claims the city manager ordered staffers to "make damn sure" a road would go through the restaurant property. Nevertheless, Heavey found that recent precedents made courts defer to the city's judgment except in rare cases where fraud can be proved.

As lawyers from the Institute for Justice argue in the Strobels' behalf, Heavey pointed out an earlier strand of legal analysis holding that bad faith or abuse of power can be grounds for a court to stop condemnation. If there's truth to reassurances about the right to keep a home or business here, the court will want to consider the important issues in the case.

Puget Sound Business Journal (Seattle) - November 6, 2006
http://seattle.bizjournals.com/seattle/stories/2006/11/06/editorial4.html

Puget Sound Business Journal
Business Leaders Get It.

Guest Opinion

In Burien, a well-aimed road tests property rights

Puget Sound Business Journal (Seattle) - November 3, 2006 by Michael Bindas

Suppose the folks at city hall didn't think your property fit their vision for the future, so they made damn sure to run a road through what is rightfully yours. You fought them in court and the judge said he thought the city's conduct might be "oppressive" and an "abuse of power," but then ruled there was nothing he could do about it.

That's the situation for seven sisters in Burien. The Strobel sisters inherited a piece of property from their parents. For a quarter century, the family has leased the property to Meal Makers, a diner-style restaurant loved by Burien's locals.

The city, however, has a different vision for the property. It intends to turn the area around Meal Makers into a fancy Town Square development, complete with upscale condos, shops and restaurants. Out with what makes a city unique; in with the same homogeneous stuff you find everywhere else.

Cognizant of their political well-being, Burien's bureaucrats recognized the possible backlash if they simply condemned the property and handed it over to the Los Angeles developer they hired to build Town Square. After all, most people believe that using eminent domain for private development is wrong, notwithstanding the green light the U.S. Supreme Court gave to such abuse in last year's Kelo decision. So the city got crafty: It decided to plan a road through the Meal Makers building. To be precise, the city manager instructed his staff to "make damn sure" a road went through the building, as a staff member later testified. No one could dispute that a road is a public use for which eminent domain is authorized, right?

The staff drew up the plan. When a subsequent survey revealed that the road would only sideswipe the property and not impact the restaurant itself, they returned to the drawing board. This time they got the road -- you guessed it -- right through the building. Then the city condemned it.

Surely there's something in Washington law that prevents the deliberate targeting of property simply because it isn't upscale enough for the government's liking ... isn't there?

In theory, there is. Even when a condemnation is for a public use, like a road, Washington law requires the government to prove that the property it's condemning is "necessary" for the public use.

On that basis, the Strobels challenged the condemnation. They argued that property isn't

"necessary" for a road if the government has to make "damn sure" to target it, then reconfigure the road until it goes right through the front door.

A King County Superior Court judge seemed to agree. He found that the road alignment "could have been easily accomplished without affecting the Meal Makers restaurant or the Strobel property." He summarized the city's uppity attitude as "you won't sell and you don't fit our vision, so we're going to put a street right through your property and condemn it." He even suggested the city's behavior might be "oppressive" and an "abuse of power."

Nevertheless, he ruled against the sisters.

Why?

Because, in Washington, the law assumes your property is "necessary" for a government enterprise unless you can prove the government engaged in "fraud" when it decided to take the property. That is a ridiculously deferential -- and virtually insurmountable -- standard. The property owner essentially has to prove the government lied. Good luck.

The Strobel sisters appealed, to no avail, and are now asking the Washington Supreme Court to review their case. The court will decide on Dec. 5 whether to accept review.

The Strobels' request of the court is modest: to hold that property doesn't become "necessary" to the government simply because government makes "damn sure" to take it. The Supreme Court should empower judges to protect the rights and property of citizens from this kind of government abuse.

MICHAEL BINDAS is a staff attorney at the Institute for Justice Washington Chapter in Seattle, which represents the Strobels.

thenewstribune.com

Tacoma, WA - Monday, July 23, 2007

Burien condemns property in eminently unfair manner

ROBIN OLDFELT
Last updated: November 26th, 2006 01:30 AM (PST)

When my mom and dad left a small piece of property in downtown Burien to my six sisters and me, they left us a part of their American Dream.

Apparently the City of Burien doesn't think Mom and Dad, who raised seven Strobel girls in South Tacoma, dreamed big enough. The property's use as a family-style restaurant is too lowbrow for the city's taste, so the city is using eminent domain to get rid of it.

While this fight may have started in Burien, its outcome will have major implications for anyone who owns a piece of property in this state. Our case, which the state Supreme Court is now considering whether to review, will decide whether government can take your property even if it doesn't need it.

The property, which our family leases to a popular restaurant called Meal Makers, has been in the family for 27 years. During that time, through thick and thin, we stuck it out. We've paid our taxes and invested in the community. Meal Makers has been equally dedicated. It has remained open, serving the community through good times and bad.

Now City Hall wants to reshape Burien's image – at our expense. Our family's property doesn't fit the city's "vision" for a new commercial and residential development project, so the city is using its power of eminent domain to take the property away from us.

The city claimed it needs the property for a road. The fact is it doesn't need the property at all; it deliberately manipulated its plans so that a road would run through it. As we learned in court when we challenged the condemnation, the city manager told his staff to make "damn sure" the road went through the Meal Makers building. His staff and the city's developer then worked hand in hand to make that happen.

Don't take our word on this. Take the word of the King County Superior Court judge who heard our case. He said the city's decision to condemn our family's property "can be summarized as follows: you won't sell, and you don't fit our vision, so we're going to put a street right through your property and condemn it."

Still, the judge felt that Washington law required him to uphold the condemnation. Despite his concern that the city's conduct might be "oppressive" and an "abuse of power," he allowed the city to take our property.

It's frustrating enough that, after years of commitment to Burien, we're being shown the door. What's even more frustrating is that it's happening simply because the city government doesn't think we're upscale enough.

Again, you don't have to take our word on this; take the judge's. In his opinion, the city and its developer "just feel that Meal Makers is inconsistent with their vision" and that allowing it to stay "would be akin to having a Denny's restaurant next to the Capitol building in Olympia."

If this can happen to our property in Burien, it can happen to your home or business anywhere in the state. If our courts allow this kind of arbitrary use of government power, then every working-class neighborhood in Washington is in danger.

I can only imagine what our mom and dad would think of all this. They grew up during the Great Depression. Dad was drafted and served in the Navy during World War II, though he had four daughters, 6 years old and younger, at the time.

Our parents worked hard and sacrificed to provide for their family; they dreamed about leaving a legacy for their daughters and grandchildren. Now the City of Burien wants to take their dream away.

My sisters and I have asked the state Supreme Court to step in. In early December, the court will decide whether to hear our appeal. We trust the justices will recognize that what's at stake here isn't just one family's struggle to keep its property, but every family's right to pursue, and be secure in, the American Dream.

Robin Oldfelt lives in University Place. This article was distributed by the Institute for Justice, a libertarian public-interest law firm based in Arlington, Va. The institute has played a prominent role in property-rights cases around the nation. The institute's Washington chapter is representing Oldfelt and her sisters in their appeal.

Originally published: November 26th, 2006 01:00 AM (PST)

the weekly Standard

Deutsche Oper, latest Kelo outrage, more.
Muhammad goes to the opera.
by The Scrapbook
10/09/2006, Volume 012, Issue 04

The Show Must Go On?

By the end of last week, it was still uncertain if the Deutsche Oper in Berlin would reschedule performances of Wolfgang Amadeus Mozart's *Idomeneo*. The opera was originally canceled for fear of rioting--but not because of anything Mozart himself had written. In this latest production, director Hans Neuenfels features a scene including the decapitated heads of Muhammad, Jesus, Buddha, and Posei don--slightly ridiculous since the opera is set in ancient Crete.

As Roger Kimball explained in the *Wall Street Journal*, "Mr. Neuenfels's version is Modern German--i.e., gratuitously offensive. It is more Neuenfels than Mozart. Instead of appearing as the harbinger of peace, Idomeneo ends the opera parading the severed heads. . . . How do you spell 'anachronistic balderdash'?" Kimball goes on, "Mr. Neuenfels is one of those directors more interested in nurturing his own pathologies than in offering a faithful presentation of the geniuses with whose work he has been entrusted."

THE SCRAPBOOK could not agree more. And if Mozart fans had wanted to riot, THE SCRAPBOOK would have suspended its usual law and order stance and been tempted to join them in storming the ramparts. But that was not the problem. Fearing potential reprisals from the Muslim community, and after local security officials warned of an "incalculable security risk," opera house director Kirsten Harms announced a change in the fall lineup, replacing *Idomeneo* with *The Marriage of Figaro* and *La Traviata*. (We would have really gotten a kick if they had replaced it with *The Abduction from the Seraglio*.)

Chancellor Angela Merkel and other members of the Bundestag have condemned the preemptive capitulation to intimidation as craven. At a press conference in Washington last Tuesday, Interior Minister Wolfgang Schäuble was resolutely anti-capitulation, saying "we will not accept it." According to a *Frankfurter Allgemeine* online poll, a solid majority of Germans also consider the move to be an act of cowardice. And they're right.

But what Frau Harms needs to ponder is that while she may have escaped the wrath of radical Muslims, this sensitivity business could quickly get out of hand--as many famous operas are anti-clerical, anti-Muslim, and even anti-French. In the aforementioned *La Traviata*, for instance, Violetta, a Parisian courtesan, is unable to marry the man she loves because his father is too concerned with upholding his family's reputation. She then returns to her "protector" and, after a brief reunion with her true love, dies of tuberculosis.

Are the French going to take this lying down, as it were, and accept being portrayed as hookers,

snobs, and pimps? THE SCRAPBOOK fears it is only a matter of time before the French issue a complaint--if not a fatwa--and the Deutsche Oper cancels Verdi.

Another Eminent Domain Outrage

Once upon a time, local governments could take your property only when they needed it for some public use. Then (thanks to the Supreme Court's *Kelo* decision) they were allowed to take your property because some other private party (i.e., a developer) promised to generate more tax revenues with it. Can they now take it just because they don't like the look of it? That's what the Washington state supreme court must decide.

Seven sisters in Burien, Washington--the Strobel sisters--own a small parcel that they lease to a successful local diner, Meal Makers. The city of Burien is undertaking a redevelopment nearby with upscale condominiums, shops, restaurants, and office space in what they call their Town Square (you can see the plans at *www.burientownsquare.com*). The plan doesn't require the use of the land on which the diner sits, but the diner doesn't quite fit the city fathers' vision of what "upscale" should look like.

So the City of Burien ginned up a plan to put a road through the Strobel sisters' property, allowing it to condemn the diner. The Institute for Justice, which is representing the Strobels, reports that the city manager told his planning staff to "make damn sure" that the new road went through the diner. When the staff drew up a plan that only sideswiped the property, he sent them back to the drawing board.

The Strobels took the city to court, where the judge found that the planned road "could have been easily accomplished without affecting" the Strobels. He nonetheless found for the city. An appeals court upheld his ruling. The Strobels now hope for relief from the state supreme court.

CBS 'News': the Couric Era

CBS News anchor Katie Couric interviews Secretary of State Condoleezza Rice, September 24, 2006:

> COURIC: When she defends her position, this former Stanford professor can at times sound like she's lecturing a class. . . . Is it really priority number one, in terms of philosophically and pragmatically, for the United States to be spreading democracy around the world?
>
> RICE: Well, first of all, the United States is not spreading democracy. The United States is standing with those who want a democratic future. . . . What's wrong with assistance so that people can have their full and complete right to the very liberties and freedoms that we enjoy?
>
> COURIC: To quote my daughter, 'Who made us the boss of them?'

Well--seems to us that when the interviewer at times sounds like she's channeling a 10-year-old, the interviewee can be forgiven for sounding like she's lecturing a class.

Jewish Ancestors in the Closet

A fascinating historical footnote to the story of Sen. George Allen's Jewish forebears appeared last week in *Washington Jewish Week.* Rafael Medoff reports on the discovery by *Time* magazine in 1939 that Secretary of State Cordell Hull's "entry in *Who's Who* wrongly stated that his wife's last name was Whitney, which was her married name from her first marriage." Hull's wife, Frances Witz, was the daughter of a Jewish immigrant from Austria--a fact he feared would doom his presidential hopes. Hull's boss, FDR, apparently agreed.

Writes Medoff: "The president told Sen. Burton Wheeler (D-Mont.) in August 1939 . . . [that] Mrs. Hull's Jewishness 'would be raised' by [Hull's] opponents. FDR added: 'Mrs. Hull is about one quarter Jewish. You and I, Burt, are old English and Dutch stock. . . . We know there is no Jewish blood in our veins, but a lot of these people do not know whether there is Jewish blood in their veins or not.'"

The political speculation was mooted, of course, by Roosevelt's decision to run for a third term. Hull served as secretary of state until 1944, and received a Nobel Peace Prize the following year.

Annals of Prisoner Abuse

"She was abused by guards who kept lights on in her cell until she would sign an autograph."
--from the obituary of Iva Ikuko Toguri D'Aquino, aka "Tokyo Rose," *Washington Post*, September 28

No Comment

"Maybe I am so sick of self-importance because I am so given to it . . . "
--Leon Wieseltier,
New Republic, October 9, 2006

The Seattle Times
seattletimes.com

Saturday, April 16, 2005 - 12:00 AM

Home-away-from-home vs. development

By Stuart Eskenazi
Seattle Times staff reporter

A restaurant that has been dishing up pot roast and peach pie at the same address for 25 years — the heart and soul of Burien, as customers tell it — may get sacrificed under the city's $120 million plan to wake up its drowsy downtown.

Meal Makers' emphatically loyal customers, many of them seniors, are questioning the wisdom of city officials who would demolish the homey restaurant to make way for the decidedly more modern, upscale and, yes, youthful Town Square.

The four-block development, ambitious for a town of just over 30,000 people, would feature 250 to 275 townhouses and condominiums, stores, restaurants, office space, a multiplex theater, a new library and a new City Hall — wrapped around a plazalike park. Groundbreaking would be early next year.

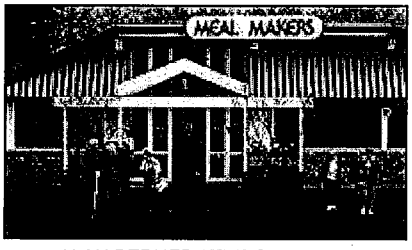
Officials are counting on Town Square to stimulate the city's lagging tax base and usher in what Burien lacks: a nightlife.

While many in Burien have supported the city's efforts to resuscitate downtown, they don't want it at the expense of a restaurant they consider family — a place where veteran waitresses peer out the windows to see who is entering so they can pour the coffee before the customer sits down.

"The officials who run this city are not thinking about what the people want," said Helen Kauffman, 71, who has lived in Burien for 50 years. "They are only thinking about what they want."

In defense, city officials are emphasizing that they, too, dearly want Meal Makers to remain a part of downtown

ALAN BERNER / THE SEATTLE TIMES
Meal Makers' regulars Don Price, left, Bob Roberts and Larry Rawdon share a joke while sitting in the counter seats they occupy daily at the popular Burien restaurant. Owner Kevin Fitz works in the background. The eatery stands in the way of development proposed for downtown Burien.



ALAN BERNER / THE SEATTLE TIMES
Burien's Town Square plans include a road realignment that would cut through a corner of Meal Makers restaurant, a Burien institution for a quarter-century.

Longtime waitress Mary Povick turns in an order at the Meal Makers kitchen window. Pot roast is the dinner specialty, but the restaurant also has added espresso drinks and low-carb offerings.

Burien. They have offered to move the restaurant to the margins of Town Square, where officials feel it would fit better with other charming yet humble main-street businesses.

But neither restaurant owner Kevin Fitz nor his landlord, Strobel Family Investments, a trust that has held the property for 30 years, are interested in moving. They want the city's Southern California-based developer to overhaul its design and build Town Square around Meal Makers and the rest of the Strobel parcel. They are challenging the city's condemnation action, filed late last month.

Burien is offering to buy the Strobel parcel, which amounts to about 6 percent of the Town Square development, at what it believes to be fair market value — $600,000 — or to swap it for the piece of city-owned land adjacent to Town Square. The land exchange would require Strobel to pay a $150,000 premium, although that amount appears to be negotiable.

"My family has invested in the community, paid taxes and been loyal for 30 years, through good and bad economic times," said Robin Oldfelt, one of seven Strobel sisters who inherited the land after their parents died. "Now is the time for our investment to pay off."

"A support center"

For the past two months, City Council members have heard a heaping helping from Meal Makers' loyalists, some of whom are threatening payback at election time.

Customers say the restaurant is warm and welcoming, particularly to its elderly and disabled customers — as valuable as the city's senior center, they say. A woman who lives in California wrote the council that she relies on Meal Makers to provide her 86-year-old parents good food and good company.

Others agree. "It's a support center," Robert Livingston testified recently at a council meeting that drew 150 to 200 Meal Makers' supporters. "It's far, far more than just a place to sit down and have a hamburger."

Meal Makers' dinner specialty, pot roast, sells for $8.25. Comfort food at a comfortable price will always have a place in Burien, say council members, who object to the spin customers have put on the debate that the city is trying to shutter Meal Makers.

"The concept for Town Square that we have developed with community input is for a very dense development," said council member Jack Block Jr. "What Robin Oldfelt and Kevin are proposing doesn't meet those goals.

"I'm a longshoreman, not a restaurant owner, but I don't believe it would impede Kevin's business to move where we propose to put him. In many ways, it's a better location than where he is now. I think it would fit Meal Makers perfectly."

Although the controversy over Meal Makers has exposed Burien's generation gap, some of those supporting the restaurant also have backed the city's efforts to develop Town Square. Kauffman, who lives within walking distance of the development, said her husband, who is disabled, is looking forward to visiting Town Square on his motorized scooter.

And Fitz, Meal Makers' owner, has sat on numerous committees that helped shape Town Square. Like many in Burien, he wants Meal Makers and Town Square to co-exist.

"But it's my decision alone to make on whether I want to move or not, and I've made the business decision that I don't want to move," he said. "It's a question of risk; there are too many unknowns. It would be hard to reproduce the feel and the ambience."

In development's path

Meal Makers' 2,800-square-foot building is one of a smattering of structures that rise out of an otherwise depressing expanse of asphalt — the four blocks destined to become Town Square. City Hall, a former bank building, is Meal Makers' neighbor.

Meal Makers' combination of vinyl benches and swivel counter seats can accommodate about 70 customers. The spotless restaurant, decorated in green and beige, is bathed in natural light, surrounded on three sides with windows.

Fitz, who grew up in Burien, has tried to keep Meal Makers current with the times, offering espresso drinks and adding low-carb fare to a menu that already includes specials for seniors. By choosing not to move, Fitz is showing loyalty to a landlord, Oldfelt, whose family has been good to him for a quarter-century.

"If she chooses to retain her property, I'm going to support her in that," he said.

Oldfelt, who lives in University Place in Pierce County, said her father and his business partner branched out from selling real estate and began buying properties more than 40 years ago. When they split up in 1982, the partners flipped a coin over who would get the residential vs. commercial sides of the business. Robert "Bob" Strobel won commercial.

In addition to the Burien land, Strobel Family Investments owns two shopping centers in Thurston County, and the family partnership wants to develop the Burien property itself.

"We have the resources to do it and a desire to do it," Oldfelt said.

The family has offered to make exterior changes to Meal Makers and build a new multistory structure on what is now the restaurant's parking lot. The goal, Oldfelt, said, would be for the redeveloped parcel to fit seamlessly within Town Square.

But Town Square's developer, Urban Partners, believes that is not possible. The current Town Square design has a road, open space and parking where the Strobel property is.

Leaving the Meal Makers building in its current location "would obliterate the plan," said Dan Rosenfeld, principal of Urban Partners. Rosenfeld said the city's offer to relocate Meal Makers to the adjacent piece of land fronting Southwest 152nd Street, across the street from the movie theaters, is "front and center, the highest-profile site of the entire Town Square assembly."

Oldfelt accuses the city of altering its design at the 11th hour, nudging the road north to take out a corner chunk of Meal Makers' building, in order to facilitate condemnation of the Strobel property.

But Burien City Manager Gary Long said the road was moved to meet space requirements for the movie theaters, library and City Hall, as well as improve traffic flow through the development.

In promoting Town Square, city officials have tried to allay concerns that the development would threaten existing businesses, saying a vibrant new core would be good for all of downtown. But with the possibility that Meal Makers could expire, council members find themselves in a tough political spot.

"I also love going to Meal Makers on Sunday mornings, sitting at that breakfast bar between a couple of people and feeling like I'm right at home," council member Lucy Krawowiak said.

"The most important thing for people to remember is that this isn't a either/or choice of Meal Makers or Town Square. I'm still hoping, praying and sending good energy that it will all work out."

Stuart Eskenazi: 206-464-2293

Published February 02, 2007

Eminent domain case upheld

The Associated Press
The Associated Press

As lawmakers consider a measure that would require property owners to be directly notified that their land is about to be condemned, a sharply divided state Supreme Court on Thursday upheld an eminent domain action against a real-estate investment and development company.

The court's 5-4 decision affirmed that Public Utility District No. 2 of Grant County gave proper notice for an eminent domain action against North American Foreign Trade Zone Industries, LLC.

The ruling comes as lawmakers are considering a measure that would require local governments and public agencies to send certifiec letters to the affected parties when they are about to take property through eminent domain. It would also require publication of a notice of the decision-making meeting in the largest area newspaper. The bill already has been passed the Senate Judiciary Committee and could come up for a full Senate vote as early as today.

"Really what the case is, it's mirroring the public debate right now over the rights of property owners," said Frank Siderius, attorney for North American. "Our state Legislature is going to have to address this issue."

The utility's spokesman, Gary Garnant, said he could not comment on the ruling because of ongoing litigation.

Lease agreement

The case before the high court was prompted by a lease agreement the utility had with North American in 2001 for 20 acres in Grant County. The land was to contain 20 diesel generators the PUD acquired because of concerns during an energy shortage about meeting the power needs of its customers.

There was no purchase option in the agreement, and after negotiations for purchase fell through, the utility moved forward with condemnation proceedings for 10 acres of the property. In setting up the meeting to discuss condemnation, the official notice sent to the public only referred to "Condemnation of Certain Real Property."

According to the ruling, the utility's executive secretary faxed the agenda for the meeting to local newspapers and radio stations, posted the agenda outside the commission's meeting room and sent copies to the commissioners and to district employees and people who requested it.

Siderius said he wasn't aware of any newspaper publishing the agenda, and said his clients were not aware of the meeting.

Condemnation petition

After the resolution passed, the utility filed a condemnation petition, at which point North American was served with a copy. The company moved to dismiss the petition, arguing adequate public notice was not provided.

But at a second hearing in December 2003, the first resolution was ratified.

"The constitutionally limited eminent domain power and important due process safeguards of our constitution are again disregarded,' Justice Jim Johnson wrote in dissent.

But the majority, led by Justice Mary Fairhurst, said the dissenters "misstate the law and the facts when they claim that due process entitles the landowner to notice of the agenda of a public meeting to authorize a condemnation."

On the Web

Supreme Court of Washington: www.courts.wa.gov

Legislature: www.leg.wa.gov

For further information

The case is Pub. Util. Dist. No. 2 of Grant County v. N. Am. Foreign Trade Zone Indus., L.L.C. Docket number 76755-6.

The eminent domain notification measure is Senate Bill 5444. The companion measure is House Bill 1458.

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LegalNewsline.

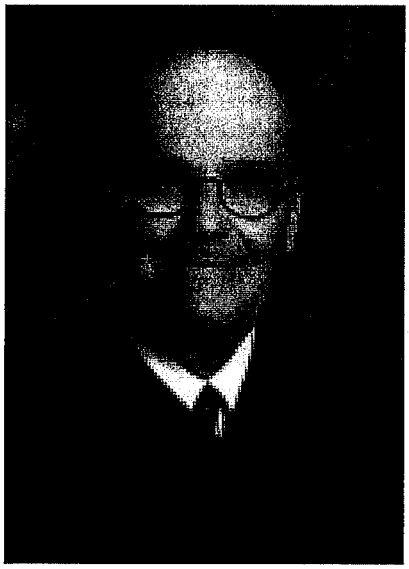
Thursday, July 26, 2007

State Supreme Courts

2/1/2007

Polarizing eminent domain case squeaks through

by Rob Luke



Chief Justice Gerry Alexander

OLYMPIA -- In a contentious and divided opinion released today, the Washington Supreme Court decided by a 5-4 majority that a Washington municipal authority gave a private company enough notice to start an eminent domain action.

In Public Utility District No. 2 of Grant County, Washington (PUD) vs. North American Foreign Trade Zone Industries LLC (No. 76755-6) the Supreme Court upheld an Appeals Court ruling that the public notice PUD gave seeking eminent domain and moving for condemnation "met the statutory requirement."

"We also hold that the trial court did not abuse its discretion in finding that substantial evidence supported a determination of public use and necessity," wrote Justice Mary E. Fairhurst on behalf of Justices Charles W. Johnson, Susan Owens, Barbara A. Madsen and Bobbe J. Bridge.

But apparently recognizing that their decision was likely to spark controversy, all except Bridge signed onto a separate "consenting opinion," authored by Madsen. The opinion stressed the extent of property-owners' rights under Washington statute but concluded "there is simply no due process violation in this case."

These arguments didn't fly with Chief Justice Gerry Alexander. He wrote a separate dissent stressing that the PUD "failed to 'fairly and sufficiently inform' the petitioner of a critical step toward condemning the petitioner's property" - a violation of the due process amendment to the U.S. Constitution, he argued.

"[M]erely posting an agenda outside a meeting room and sending it on to local newspapers and radio stations was not a method of notice 'reasonably calculated to inform' the petitioner that its property interests were threatened," Alexander wrote.

Nor did they with Justice Tom Chambers, who also wrote a separate dissent. Nor did they with Justice James M. Johnson, who wrote a dissent in concurrence with

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Justice Richard B. Sanders.

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Chambers, in a colorfully written argument, scolded PUD for being "caught with its hand in the public's cookie jar trying to sneak one of the public's cookies." He concluded that defects in the PUD's original agenda notice meant "the [eminent domain] process must be started anew."

Johnson's and Sanders' assessment of the majority's verdict was somewhat blunter. "The majority today permits a public agency to take private property without proper notice and to condemn without provable public purpose," Johnson wrote. "The constitutional right to own property and the public right to notice of governmental action loses again."

PUD's eminent-domain action commenced in July 2003.

Filed Under: State Supreme Courts

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The Seattle Times
seattletimes.com

Thursday, April 19, 2007 - 12:00 AM

Editorial

Not a good ride from Sound Transit

The governor's signature on the eminent-domain bill is a fitting end to a bad case.

What happened to Kenneth and Barbara Miller — a government body meeting to condemn their land without telling them about it — should not happen again.

The Millers knew that Sound Transit might condemn their property in Tacoma for a park-and-ride lot. But the meeting in 2003 at which the decision was made was publicized only by a notice on an Internet page, and the notice didn't mention their property.

The Millers didn't see the notice and learned only afterward that the Sound Transit board had voted to condemn their land. They sued, and argued at the Washington Supreme Court that government has a duty to tell owners in advance of condemnation proceedings.

We agreed with Justice Jim Johnson, who wrote in dissent that "due process of law," which is guaranteed by the state and federal constitutions, requires individual notice. The majority went the other way, ruling that under Washington law, a vague Internet posting was good enough.

Attorney General Rob McKenna, a Republican, and Gregoire, a Democrat, agreed that the law be changed. The political parties have different ideas about property rights, and there are some other issues that remain to be settled, but on this matter they found quick agreement. The bill sailed through the Legislature without opposition.

The public owes thanks to the Millers. They lost their battle, but won a larger one for the public.

The Seattle Times
seattletimes.com

Sunday, January 7, 2007 - 12:00 AM

Editorial

No taking property without notification

If a government agency wants to take your land for a public use, it ought to notify you of its intention. If it plans to make its decision about your land in a public meeting, it ought to notify you of the meeting.

We support Attorney General Rob McKenna's proposal to make this requirement the law in Washington. Currently, it is not. That became obvious last year, when the Washington Supreme Court ruled against Kenneth and Barbara Miller. Sound Transit had made its decision to take the Millers' Tacoma property at a public meeting. The agency had posted a notice of the meeting on its Web page, with an agenda item about taking property for a park-and-ride lot. It had not specified the Millers' property nor told the Millers individually, and the court said there was no law requiring it do so.

We said at the time there should be such a law, which McKenna now proposes and House Majority Leader Lynn Kessler, D-Hoquiam, will sponsor. This bill is about procedure — and, as Kessler says, "about respect."

There is a second problem in the world of property takings.

It is about defining when government can take property and when it can't. The state constitution says private property may be taken only for public use, but courts have allowed takings for uses that were not really public.

A new paper by the Washington Policy Center says one example is the Community Renewal Law, under which a city can declare an area blighted, condemn private property that is not blighted, and offer it for use by a private developer, all under the permissive idea that community renewal is a public purpose.

We believe property takings should be limited to uses that are really public: roads, schools, fire stations, etc., the protection of public safety and health, and common-carrier utilities such as pipelines and electric transmission lines.

How to define this is a technical question, and to that end McKenna is appointing a group of experts. They should draw up a bill that Democrats and Republicans can both support.

The Seattle Times
seattletimes.com

Sunday, February 19, 2006, 12:00 a.m. Pacific

Editorial

More arbitrary taking of land by the court

Four months ago, the Washington Supreme Court allowed the Seattle Monorail Authority to step on the property rights of John and Doris Fujii by condemning property the agency didn't need. Following the Nov. 8 vote, an injustice in that case was averted — no thanks to the court.

Now, in a ruling about the property of Kenneth and Barbara Miller of Tacoma, the court has done it again.

The Miller case stemmed from a public meeting at which Sound Transit made the decision to condemn the Millers' land for a park-and-ride lot. The question was whether the agency had to tell the Millers about that meeting beforehand. The court said it didn't. The Millers knew their property might be condemned at some point. But they didn't know a certain meeting in June 2003 would deal with their property — and they weren't there.

Justice Mary Fairhurst wrote for the five-justice majority (including Bobbe Bridge, Charles Johnson, Barbara Madsen and Susan Owens) that the Millers were "not entitled to actual individualized notice."

The law is fuzzy on it, and Fairhurst sided with the government. Sound Transit had announced its meeting on its Internet site, saying that it planned to take "certain real property interests" near a railroad station. It had named the railroad station but not the property it wanted to take. That was good enough, Fairhurst said.

Chief Justice Gerry Alexander, writing also for Justices Tom Chambers, Jim Johnson and Richard Sanders, argued that it was not good enough to post it on the Internet, because the Millers might not be connected to the Internet. Better to put it in a newspaper, Alexander said.

While we appreciate Alexander's endorsement of our product, we prefer the position taken by Jim Johnson, who said the notice also should have had "specific identification of the property to be condemned."

We would go further: Notice of the property to be condemned should also have been delivered to the people who own it. "Due process of law" should require no less.

The Seattle Times
seattletimes.com

Friday, May 19, 2006, 12:00 a.m. Pacific

Editorial

Land seizure by courts and by mail

When government plans to seize your house or land, it has to make a serious effort to warn you. So said the U.S. Supreme Court in a case handed down last month. It is a message that should be heeded by the Washington Supreme Court, which regrettably has held government here to a much lower standard.

In a ruling last February, our court decided the case of Kenneth and Barbara Miller of Tacoma. The Millers knew their property might be chosen by Sound Transit for a rail station. But they didn't know a certain meeting in June 2003 would decide about their property. The agency hadn't told them about it. It hadn't posted the property. It hadn't put an ad in the paper. It had put a notice on its Internet Web page that it would have a meeting to consider condemning property near the proposed station, but it did not name the property it wanted.

The question in Olympia was whether that was enough. A majority — Justices Mary Fairhurst, Bobbe Bridge, Charles Johnson, Barbara Madsen and Susan Owens — said it was, and that the Millers were "not entitled to actual individualized notice."

Contrast that with the U.S. Supreme Court's ruling in Jones v. Flowers. That is a case brought by Gary Kent Jones, who had not paid the property tax on his house, which was inhabited by his ex-wife. The state of Arkansas sent a certified letter to where it believed Jones lived, saying that if he did not pay, the state would take the house. The letter was returned unclaimed.

Two years went by, the state sent another letter that also went unclaimed. It sold the house to Linda Flowers — an $80,000 house, for $21,042. Jones sued, saying the state hadn't made enough effort to find him before selling his house for peanuts.

Chief Justice John Roberts, writing for the majority, agreed with Jones. When the letter came back unopened, he said, for officials to shrug their shoulders and say, "We tried," was not good enough.

In our state, the effort to find the property owner was so weak as to be almost undetectable, and our court said it was close enough for government work. The decision in Jones v. Flowers shows that our court was wrong.

SEATTLE POST-INTELLIGENCER
http://seattlepi.nwsource.com/opinion/263302_bunting17.html

Little-noticed ruling should be reconsidered

Friday, March 17, 2006

By KENNETH F. BUNTING
P-I ASSOCIATE PUBLISHER

Let's face it. When it comes to computers and Internet technology, Seattle and the Puget Sound region are more wired and more "with it" than most of the country.

Still, open-government advocates and others are rightfully alarmed by a little-noticed Washington Supreme Court decision last month that places Washington state in a class all alone when it comes to notice requirements for public meetings.

A slim 5-4 majority of the state Supreme Court decided that legislative bodies of local governments can fulfill their requirements to notify the public about meetings they are holding and actions they are considering simply by posting that notice on an agency's own Web site.

The advocates see the ruling as a dangerous diminution of the state's open meeting laws and the general philosophy of transparency and openness in government.

Even in wired and connected Washington state, they argue, not everyone has access to a computer and Internet connection. Even the wired and computer-savvy among us may not be capable of or willing to look at every governmental agency's individual Web sites to check for meeting schedules and agendas.

The ruling was the first appellate decision anywhere in the nation to hold that Web-only posting is adequate when public notice is required by law.

It's a badge of distinction the Supreme Court justices should shed, say the advocates, who are asking the judges to reconsider the issue and change their minds.

It is also a big deal for property-rights advocates because the disturbing ruling came in a dispute over seizure of private property through governmental powers of eminent domain, an area for which most states, including Washington, long have had even more stringent notice requirements than for ordinary public meetings.

The ruling came as a result of an unsuccessful fight by a Tacoma couple to keep Sound Transit from seizing a large parcel of land they owned to build a rail station and park-and-ride to serve the South Tacoma-Lakewood area.

Kenneth and Barbara Miller argued against the seizure of their property on several grounds, trying to convince the transit agency, then the courts, that two other nearby land parcels would make a better southern terminus for the commuter trains.

The Millers and their supporters in the legal dispute most certainly know that motions for reconsideration, on their face, are long shots. Essentially such motions are tantamount to telling learned jurists that they really couldn't have meant what they said; or that they forgot to consider some key

factor in examining the law, the facts and the policy issues at stake.

Even if egos never came into play, that's an automatic hard sell that most often falls flat.

But here's a case where esteemed justices ought to toss out their stick-to-their-guns tendencies.

Far be it from me to suggest that justices didn't give enough thought to their decision. But Justice Mary Fairhurst, author of the decision for the court majority, refers repeatedly to Sound Transit's "light rail" line, although the rail station in question is for the agency's Sounder commuter rail line.

And, Justice James Johnson, author of one of two dissenting opinions, bases some of his most persuasive arguments that the majority blew it on a rule the transit agency didn't adopt until 16 months after the hearing in dispute.

Fairhurst also writes in the majority opinion that the rail line she repeatedly wrongly describes currently "runs from downtown Tacoma to downtown Seattle." It's two trains, mind you. But the Sounder commuter rail service really extends from downtown Tacoma to Everett.

Such misstatements have little to do with legal issues or principles in dispute. But for the record: The Everett station is 35 rail miles away from downtown Seattle. Each commuter rail train is significantly heavier than the light rail trains currently in operation. And, the commuter rail trains have to be pulled by locomotives that each cost area taxpayers more than $5 million.

Johnson and Chief Justice Gerry Alexander, who wrote a separate dissenting opinion, agreed with the majority that Washington's notice statutes don't clearly set out minimum standards for meeting notices. But they said the intent of the statutes and philosophy behind them are clear.

While the state law "does not necessarily require notice to be published in a newspaper," Alexander wrote, "it is highly optimistic to expect a landowner's clicks of the computer mouse to lead, at the right time and on the right site, to a posted proposal bearing on his property interests."

No one with a black robe and an Olympia office in a place called "The Temple of Justice" has asked my opinion. But I'd say this one merits a Supreme do over.

Kenneth F. Bunting is associate publisher. E-mail: kenbunting@seattlepi.com

SEATTLE POST-INTELLIGENCER
http://seattlepi.nwsource.com/opinion/261303_vandyk02.html

No justice in taking private property

Thursday, March 2, 2006

By TED VAN DYK
P-I COLUMNIST

"The law is an ass." -- Charles Dickens

The plaintive voice on my message machine last week was that of Kenneth Miller of Tacoma. He was upset because, against common sense and simple justice, the Washington Supreme Court had upheld, 5-4, Sound Transit's condemnation of his and his wife Barbara's property for a park-and-ride lot adjacent to a South Tacoma Sounder rail station.

Charlie Klinge, the Millers' attorney: "The state Supreme Court majority destroyed a previously held constitutional right. Government can take your private property even when the condemnation process is corrupted by falsehoods, threats to community leaders and other arbitrary and capricious actions."

Sound Transit seized the Millers' property after posting a meeting agenda, which included an unspecified condemnation matter involving "certain real property interests," on its Web site. It did not, in accord with prior practice, publish notice in newspapers or post notice on the property or in public places. The Millers were not notified directly of the meeting. The court decision, Klinge points out, was the first in the United States to declare Internet notice alone to be sufficient in such an instance.

The Millers provided evidence that Sound Transit made false public statements that alternative parking-lot sites had prohibitive contamination problems; did not know that a change in the project would require demolition of a house on their property listed as historic by the city of Tacoma; and refused to consider a preferable site next to the station that would not require pedestrian crossings over the tracks. They alleged specifically that Sound Transit chairman and Pierce County Executive John Ladenburg and Sound Transit board member and Tacoma City Councilman Kevin Phelps threatened and silenced a community activist who questioned the process.

A trial court earlier had found that Sound Transit "negligently omitted and missed some facts and evidence which ideally should have been considered, and if considered could have reasonably led to a different result." Yet it let the condemnation action stand. The Supremes went along.

Justice Mary Fairhurst wrote for the majority that the Millers were "not entitled to actual individualized notice" of the meeting at which their property was taken. The court, in publishing "facts" regarding the decision, inadvertently disclosed that it did not even know the difference between Sound Transit's inter-city Sounder service and its local light rail systems. "Sound Transit," the document erroneously stated, "is attempting to make light rail an alternative to commuters along the I-5 corridor. Currently, light rail runs from downtown Tacoma to downtown Seattle. This case involved Sound Transit's efforts to extend the line south."

Chief Justice Gerry Alexander joined Justices Tom Chambers, Jim Johnson and Richard Sanders in opposing the decision. Johnson stated, "Only by adopting a rubber-stamp standard of review at odds with article 1, section 16 (of the state constitution) and relevant case law can the majority look the other way. To rely on clearly erroneous factual information of such magnitude amounts to arbitrary or

capricious conduct."

The U.S. Supreme Court, in the controversial Kelo case last year, upheld the right of public agencies to seize private properties for almost any purpose they defined as in the public interest -- including commercial development by other private-sector entities. A few months ago, the Washington Supreme Court upheld the Seattle Monorail Authority's taking of property that it did not even need from John and Doris Fujii.

It is not surprising that Sound Transit acted as it did. It is surprising, however, our state's highest court would tolerate it.

If you believe any government or quasi-public entity should have power to take your property as the Millers' was taken, you obviously are a born victim. Or you are state Justice Bobbe Bridge, Charles Johnson, Barbara Madsen, Susan Owens or Fairhurst and sided mindlessly with the predator against its prey. Each fed the destructive public belief that Court of Justice is an oxymoron.

Ted Van Dyk has been involved in national policy and politics since 1960. E-mail: t_van_dyk@hotmail.com.

The Seattle Times
seattletimes.com

Friday, October 21, 2005 - 12:00 AM

Editorial

Sinking ship of private property

The Washington Supreme Court's "sinking ship" ruling yesterday is a dangerous precedent. The decision written by Justice Barbara Madsen waters down the state constitution's protections of private property and approves of disingenuous behavior by the Seattle Monorail Authority.

The case concerns a triangular property between the Smith Tower and Pioneer Square in Seattle, now used for a parking garage that looks like the prow of a ship. Immigrant railroad laborer Henry Kubota bought the property in 1941. A few months later, he was interned with other Japanese Americans for the duration of World War II. A friend managed the property, and it is now held by Kubota's son-in-law, John Fujii. The Monorail Authority wanted about a third of the property for a station. Under the power of eminent domain, the agency could condemn the land for that, because it would be a public use. The argument arose because the agency wanted to also take the other two-thirds. Its idea was to use it during construction and sell or lease it to a private developer afterward, to the profit of the Monorail Authority.

The Washington Constitution says, "Private property shall not be taken for private use." The Monorail Authority argued that piling stuff on the excess property during construction was a public use. It said it wasn't too sure how long it would use it for that, but it didn't have any *specific* plans for commercial development afterward. So, was it OK to just take the whole thing?

The court said yes.

We hold with Justice Jim Johnson's spirited dissent. The monorail should have taken and paid for what it needed, and no more. What's really going on here, Johnson wrote, was that it wanted to take extra land, "which would appreciate and then be resold by the agency in order to help finance its troubled project."

The monorail will, we hope, be a dead issue after Nov. 8. This precedent will remain as a bad legacy of a bad project.

SEATTLE POST-INTELLIGENCER
http://seattlepi.nwsource.com/transportation/245425_monorail21.html

High court sides with monorail on right to condemn land

Project can acquire parking garage in Pioneer Square

Friday, October 21, 2005

SEATTLE POST-INTELLIGENCER STAFF

The Seattle Monorail Project can acquire land including the city's "Sinking Ship" garage in Pioneer Square by condemnation, the state Supreme Court said in a 7-2 ruling Thursday.

The agency hopes to complete the purchase even though the project's future is in doubt.

The agency today will ask King County Superior Court Judge Jeffrey Ramsdell to approve an agreement for the agency to complete the purchase within 10 days. The land is a triangle bounded by James Street, Second Avenue and Yesler Way and would be used for a station, construction staging and possible redevelopment.

Voters will decide Nov. 8 whether to authorize construction of a shorter line or to halt the project altogether. But the purchase agreement had been made some months ago, to be triggered by clearance from the Supreme Court, monorail spokeswoman Marjorie Skotheim said.

"Obviously the results of the election will affect things, but right now we're still going about our work, and there was an agreement we were a party to that requires us to acquire the property within 10 days, and that is what we will do now," she said.

A majority of the nine Supreme Court justices said the agency had eminent-domain power even though state law didn't spell it out in detail, an issue raised by the landowners.

The majority said eminent-domain powers such as those granted to cities and other "municipal corporations" also have been granted to the monorail project.

"By implication ... the procedure to be followed by a city, applies to SMP," Justice Barbara Madsen wrote. Concurring were Chief Justice Gerry Alexander and Justices Bobbe Bridge, Charles Johnson, Susan Owens, Tom Chambers and Mary Fairhurst.

Dissenting were Justices James Johnson and Richard Sanders, who argued that SMP didn't need the entire parcel for the station and that the part not to be developed for the station "is not a public use."

SMP and the landowner, HTK Management LLC, agreed the agency would pay $10.4 million for the entire triangle if the courts approved the purchase. Of the 39 properties SMP said are needed for the line, the agency has bought 34 others at a cost of just over $72 million. It is negotiating to buy three other parcels and waiting for a fourth, to be vacated by the Federal Reserve Bank, to become available.

The agency has dropped a condemnation action to acquire an easement across from the Fishing Vessel Owners shipyard at Fishermen's Terminal, because the agency now intends to end the line a half-mile south of the yard if voters approve.

The Seattle Times
seattletimes.com

Friday, October 21, 2005 - 12:00 AM

Monorail agency can condemn parking garage

By Mike Lindblom
Seattle Times staff reporter

The state Supreme Court yesterday ruled that the Seattle Monorail Project may use eminent domain to condemn the "Sinking Ship" parking garage in Pioneer Square, even though a new train station would take up only a third of the land.

The monorail project would use the rest of the property to store equipment during construction. Then it would sell or lease it to developers to offset the cost of the project.

The monorail agency is now working to take over the property within two weeks to run the garage until it is needed for construction, said spokeswoman Marjorie Skotheim.

But the owner, John Fujii, said, "It appears the monorail will not be built anyway, so it remains to be seen whether we lose our land."

The entire monorail project could be scrapped unless Seattle voters approve Proposition 1 in the general election.

The high court ruled 7 to 2 that state law gives "deference to local governments to determine what property is necessary to implement projects." A transportation project such as the monorail is unquestionably a public use, the court ruled.

Justices James Johnson and Richard Sanders dissented, saying the condemnation proposal is a "land grab" that violates property rights.

Information

The Supreme Court ruling in favor of Seattle Monorail Project:

http://www.courts.wa.gov/opinions/?fa=opinions.opindisp&docid=764620MAJ

The dissenting opinion:
http://www.courts.wa.gov/opinions/?fa=opinions.opindisp&docid=764620DI1

The triangular parking garage at Second Avenue and Yesler Way gets its nickname because its sloping decks appear to list like a capsizing boat.

Fujii initially welcomed the monorail when voters approved the line in 2002. He hoped to build high-rise housing next to the new station. He was willing to rent out land during construction, but monorail leaders considered that too costly. In May, the agency agreed to a $10.4 million purchase price, but Fujii continued to resist a forced buyout.

Mike Lindblom: 206-515-5631 or

mlindblom@seattletimes.com

Seattle Post-Intelligencer

SEATTLE

| AND THE NORTHWEST |

THURSDAY, MARCH 17, 2005 **SECTION B** ★★★

Monorail project crosses the line on public use

WILLIAM R. MAURER
Guest columnist

Can the government seize your property so it can sell it to a private developer? That is the key question in a case to be heard today by the Washington Supreme Court.

Under the Washington Constitution, the government may use "eminent domain" – that is, condemn private property – to obtain property only if it devotes that property to a "public use." Public uses are things used by the public – highways, libraries or parks. Every state constitution and the U.S. Constitution limit eminent domain to public-use projects, but, increasingly, local governments have abused that power by condemning property to transfer it to private developers. The private developers thus get property without negotiating for it, and the government gets more property taxes than it would have under the original owners.

Fortunately, the state constitution is uniquely protective of private property and explicitly forbids this type of governmental abuse. Because of our strongly worded constitution, Washington courts have stood against the tide of "private condemnations." Our Supreme Court is once again called on to preserve this fundamental constitutional protection in a case involving the Seattle Monorail Project.

At issue is the famous "Sinking Ship" parking garage in Pioneer Square owned by the Fujii family – property that the family was able to hold on to even when some members were interned during World War II because of their Japanese ancestry. SMP seeks to condemn part of this property to build a station for its planned expansion, but the station will not cover the entire property. The monorail will use the rest of the lot temporarily as a construction staging ground. While all the parties agree that the station and temporary staging area are public uses, the monorail wants to permanently condemn the property designated for the staging area.

At the trial court, the Fujii family produced evidence that SMP plans to sell the property to private developers once construction is complete in order to generate revenue. If this is the intent, then the plans are in direct violation of the state constitution.

Taking property for a monorail station fits within the definition of public use, as does temporary use of the rest of the parcel during construction. SMP cannot, however, take more of a property interest than it needs for public uses and transfer that property interest to private developers.

Monorail officials responded to evidence of intent by claiming they have no plans at all for the property once construction is complete. But this is not good enough under the constitution, which mandates that the property be put to a public use. "We don't know what we are going to do with this property" does not equal a "public use."

The Washington Constitution does not permit the government to take your property so that it can become a real estate speculator. Nor does it permit the government to take your property because it may – or may not – have a public use sometime in the future. If SMP cannot identify a public use for the portion of the property needed for construction staging once construction is complete, the land must be returned to its owners.

With this case, our state's highest court has before it another opportunity to affirm the right of all Washingtonians to be secure in their homes and businesses and free from such unconstitutional land grabs.

William R. Maurer is executive director of the Institute for Justice Washington Chapter, which filed a friend-of-the-court brief on behalf of the Fujii family.

The Seattle Times
seattletimes.com

Sunday, March 12, 2006, 12:00 a.m. Pacific

Couple's dream now their worst nightmare

By Mike Lindblom
Seattle Times staff reporter

Even though no train is coming, the couple who own tiny Caffè Appassionato likely will be forced to move because of the Seattle Monorail Project.

Taiki Hong Lee and husband Young Lee fought condemnation by SMP, but they finally sold their tiny triangle near the Space Needle for $580,000 after the agency defeated them in state appeals court last year.

When voters canceled the monorail last fall, the Lees asked to buy back the land. The agency says it must be resold for full market value, through competitive bidding this month — a contest the Lees believe they would lose.

"This is my baby," says Taiki Lee.

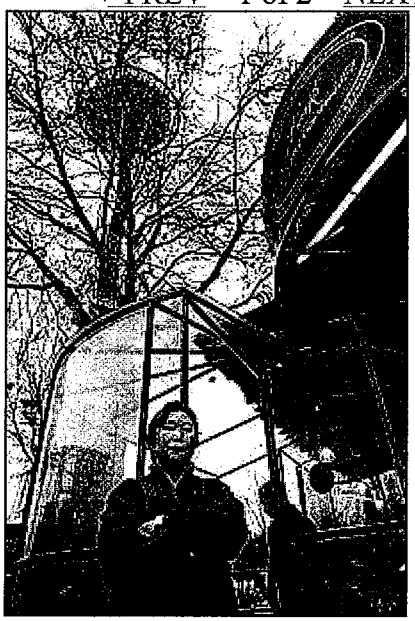
The couple bought the century-old building for $220,000 in 1997, then spent $221,000 renovating it. For now, they continue to operate the cafe and an accounting business upstairs, paying $1,882 monthly rent to the SMP. They dream of adding condos.

Instead, a future buyer can evict them with two months' notice.

"Am I living in a democratic country or a communist country?" Young Lee asked. "If they don't use it, they have to return it."

Legally, that's not the case.

PREV 1 of 2 NEXT



enlarge ELLEN M. BANNER / THE SEATTLE TIMES
Taiki Lee, forced to sell her "baby" — Caffè Appassionato — to the Seattle Monorail Project, has been unsuccessful in buying it back.

Related

- Sale of Seattle Monorail Project could bail out Seattle taxpayers

Under the state constitution, any special deal with former owners would be an illegal "gift of public funds," SMP attorneys say.

The Lees didn't apply for an SMP relocation grant last year, thinking the monorail's collapse would

help them buy the property back.

"She has this bastion of hope that somehow in this country, it is impossible to permit what happened to her, and somehow the American system is going to somehow correct itself and be fine," said her attorney, Clay Terry.

SMP says it has relocated 42 businesses, 13 homes and three parking lots. The impact is less than Sound Transit's surface light-rail project, which has relocated 215 owners and tenants so far. SMP has also paid $6.8 million in relocation aid to owners and tenants.

SMP board member Jim Nobles said the more money that comes in from land sales, the sooner the agency can pay its debts and eliminate its tax on car tabs.

"The land belongs to the taxpayers of Seattle right now," he said.

Cleve Stockmeyer, a former monorail-board member, said former owners deserve a chance to repurchase at cost plus 3 percent.

"I think it's a case of inertia, and government heartlessness," he told Fox News' "Hannity & Colmes" program, which was doing a series on alleged eminent-domain abuses. "It shouldn't be the public purpose to just flip property and speculate."

But land-use attorney Larry Smith, who represented the Fiorito family when they fought SMP's purchase of the land now occupied by the Denny's in Ballard, advised his clients to "take the money and move on" rather than seek to buy back the property.

Taiki Lee finally gave up hope after reading an e-mail from an aide to state Sen. Jeanne Kohl-Welles, D-Seattle (a nonvoting SMP board member), relaying SMP's view that the Lees got a good price and were allowed to continue renting their business space at a below-market rate.

"Money is not important," Taiki Lee said. "My property, my dream, my American dream is gone. They still did not apologize for the mistake they made on me. It hurts me."

Kohl-Welles said she sympathizes, but "I can't recommend that the monorail board violate the state constitution."

Mike Lindblom: 206-515-5631 or mlindblom@seattletimes.com

SEATTLE POST-INTELLIGENCER
http://seattlepi.nwsource.com/transportation/216347_mono17.html

Monorail vs. 'Sinking Ship' garage

Supreme Court tussle shapes up over triangle of land downtown

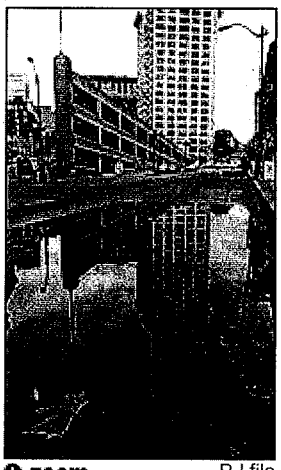
Thursday, March 17, 2005

By LARRY LANGE
SEATTLE POST-INTELLIGENCER REPORTER

Two Seattle landmarks -- one real, one planned -- will be among the early conversation at the state Supreme Court today.

Descendants of a longtime Seattle family are challenging the attempted condemnation by the Seattle Monorail Project of all of a triangle of land at Second Avenue and Yesler Way, site of the infamous "Sinking Ship" parking garage.

The monorail wants to acquire the site to build one of 19 stations. Saying it doesn't yet know how much of the half-acre site the station will cover, it wants to acquire it all, using part of it for a station and part for construction staging.


zoom P-I file
The 'Sinking Ship.'

What happens on the remainder of the half-acre triangle isn't yet known, but the fight is over that remainder.

The owners, descendants of Henry Kubota, want to sell the Seattle Monorail Project only enough land to provide for the station, leaving the rest for the family to develop, possibly in connection with the station.

"We want the monorail to talk to us about working with them," said the family's attorney, George Kresovich. "They've been unwilling to do that."

Monorail officials, however, say they need all the land because what isn't used for the as-yet undesigned station will be used to stage construction on the system, which will pass through Pioneer Square en route between Crown Hill and West Seattle.

Because it could take several years to build the station and other amenities, buying the entire parcel is "the best way to save the taxpayers money," said Ross Macfarlane, the monorail's legal affairs director.

The triangular lot is bounded by Second Avenue, Yesler Way and James Street in a pocket formed by disjointed street platting in the neighborhood.

Kubota, a railroad worker and hotel manager, bought the land in the early 1940s but had to allow an acquaintance to run it while Kubota was displaced from his home during World War II along with thousands of other Japanese residents.

The land was the site of the Seattle Hotel until it was demolished in the early1960s. A developer then took out a lease on the site, promising to build an office building. However only the prow-shaped parking garage and a gas station were built.

Kubota's son-in-law, John Fujii, hoped to develop housing on part of the site once the station was built, but Macfarlane said leasing part of the site for several years during construction could be as expensive as buying it outright.

The monorail initiated the condemnation action, as it has for most properties including those eventually sold without a battle by owners.

Of the 39 properties the agency needs to acquire for the line, 11 have been bought without dispute and negotiations are in progress for three others for which no condemnation actions have been initiated. Twenty others were purchased after condemnation actions were filed but the agency reached out-of-court agreements, and negotiations are under way for five others that face a condemnation threat.

Fujii, unlike most of the other landowners, fought the action. The family lost in King County Superior Court but appealed and the state Court of Appeals sent the matter up to the Supreme Court because of the issues involved.

Fujii and his family argue that the agency, while granted general condemnation authority by the Legislature two years ago, doesn't have full power to do so because the law didn't spell out the procedure.

Macfarlane said that while the Seattle Monorail Project's authority wasn't spelled out in precise detail, over the years the Legislature has recognized that authority and the monorail as an agency in Seattle is following procedure set out for cities.

P-I reporter Larry Lange can be reached at 206-448-8313 or larrylange@seattlepi.com

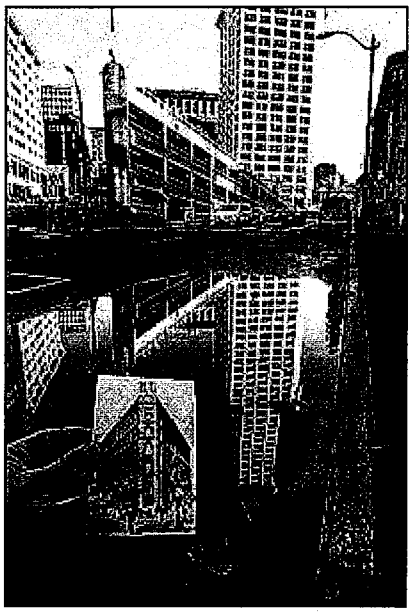
The Seattle Times
seattletimes.com

Thursday, March 3, 2005 - 12:00 AM

Guest columnist

Treat property owners fairly along the Green Line

By John S. Fujii
Special to The Times



STEVE RINGMAN / THE SEATTLE TIMES
The Seattle Hotel (small photo) once stood on the parking garage site.

When the Seattle Monorail Project (SMP) sued to condemn our family's property for a Green Line station across from Smith Tower, we quickly learned an overreaching, single-purpose agency could swoop down and take our land without a long-term plan for the rest of the triangular block at Second Avenue and Yesler Way.

We could see the agency eventually selling off the unused portion of our property, now occupied by a three-level garage, to a private developer.

Initially, and to this date, we have offered to share the entire site — by selling the approximately one-third portion required for the station, while leasing the rest for staging and other temporary uses during Green Line construction. When construction is complete, we would like the remaining two-thirds section returned to us to fulfill our own development vision for the land.

It has always been a family dream to restore the historic property as a centerpiece of Pioneer Square. After 64 years of ownership, the land is priceless to us, especially after my father-in-law's experience in holding onto his property during World War II and after the major earthquake in 1949.

Less than a year after my wife's father, Henry T. Kubota, bought the Seattle Hotel in 1941, he was forced to relocate, with thousands of other residents of Japanese ancestry, to an internment camp. Instead of losing his property, as many did during the war, he received help from Charles Clise, who agreed to manage the hotel for him until he returned.

The aging and structurally damaged hotel was demolished in 1961, with plans to build an office tower. However, much to my father-in-law's chagrin, the developer's project did not progress beyond a parking structure, the current "Sinking Ship" garage, and a gas station.

Today, our family would proudly share the property with the people of Seattle to help the monorail get built and create a plan for Second and Yesler that serves the site's history, as well as the community interest.

We do not wish to thwart progress on the monorail's Green Line. We seek only fairness with respect to our interest in the remaining land, for which no post-construction public use has been defined. We want to work with the Pioneer Square neighborhood to honor the past and secure a rightful role in the future of our property.

Fortunately, we're making progress. Senate Bill 5534 now includes language that clarifies the monorail project's power to condemn property, without hindering the agency's ability to complete its mission. The amended bill, now making its way through the Legislature, stipulates that the authority may acquire by eminent domain only that interest in a property necessary to build and operate a public monorail system.

The Seattle Monorail Project's condemnation suit on our family's property has forced us to defend our ownership interest in court as well. The state Supreme Court will hear our case on March 17 to decide issues surrounding the extent of the monorail's authority to acquire land for public use.

We didn't want our fate decided in court, but that's where the SMP took it instead of working with us when we asked.

The monorail's push to take the entire property is surprising after initial proposals show the Yesler station taking up less than one-third of the property. And it's possible the contractor-designed station will be even smaller, given the bid the monorail has received.

We've taken our fairness message to other property owners, community leaders, lawmakers and anyone who will listen. It's not an anti-monorail message. Rather, by sharing our land with the monorail, we can finally do the right thing for this historic property.

Our story is one of several along the Green Line. Other property owners face the sacrifice of land and successful businesses built through the years — not to mention the jobs — for the public good of the monorail. For some, no amount of money can salvage what is lost.

We're finding agreement for our position among people on both sides of the monorail debate. And we're grateful to have found support among our elected leaders in the state Senate who are considering the clarifying language in SB 5534.

A fair solution will see the SMP acquiring the land it needs to fulfill its stated purpose — but not a square foot more. In a fair process, my family will hold onto an important legacy in Pioneer Square, honor the property's past and carefully plan its future for the benefit of the community.

John S. Fujii and his wife Doris run HTK Management LLC, which owns the property at the proposed Second Avenue and Yesler Way monorail station site.

The Seattle Times
seattletimes.com

Thursday, December 02, 2004, 12:00 a.m. Pacific

Monorail may sink dream for Pioneer Square's Sinking Ship

By Mike Lindblom
Seattle Times staff reporter

Henry Kubota hung onto his little triangle of land near Pioneer Square, even after being sent to a World War II internment camp for residents of Japanese ancestry.

Six decades later, his family could be forced to sell the property to make way for the monorail.

The Seattle Monorail Project (SMP) says it needs the land for a station at Second Avenue and Yesler Way. It would be a hub just 90 paces from the regional bus and light-rail tunnel, serving Smith Tower and government office buildings.

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Doomed by monorail?

Trouble spots along the line

The property is now occupied by a quirky angular parking garage nicknamed the Sinking Ship, which would be demolished to make room for the station. The Kubota family doesn't oppose a monorail, and they too would like to raze the old garage, which the neighborhood seems to agree is an eyesore.

But they are fighting SMP over who will control the land's future.

The station can fit on less than half the triangle. Monorail officials are trying to condemn the whole site and use the leftover land as a storage yard for construction materials, then resell it after the line opens five years from now.

Kubota's son-in-law, John Fujii, has taken the dispute to a state appeals court, after a King County judge ruled in SMP's favor. Fujii wants to build housing there, with retail on the ground floor.

"We have held on to this property 64 years," he said. "We would not have held it this long unless we planned to do something important at the site."

The three-level garage, which appears to list in a concrete sea, last made news in 2001 as the perch where police commanders and news cameras witnessed a fatal Mardi Gras riot in Pioneer Square. Frommer's Guide calls the garage "the monstrosity that prompted the movement to preserve the rest of this neighborhood."

"It's one of the ugliest things in Seattle," acknowledges Kubota's

Monorail condemnations

Unresolved lawsuits: The Seattle Monorail Project (SMP) has filed 22 condemnation lawsuits, of which 10 are still unresolved. However, the agency has either purchased land or obtained access to begin work at most of the 19 station sites.

daughter, Doris. She and Fujii own the land beneath, while a tenant runs the garage under a long-term lease.

Earlier, it was the site of the Seattle Hotel, a favored stop for Alaska gold prospectors that was built after the great 1889 fire.

Fewer displacements: Because it travels overhead, the monorail requires buying out fewer properties than Sound Transit's light-rail line, which includes a four-mile surface route in Rainier Valley. The SMP has displaced 42 businesses and homes to date, compared with a projected 215 for Sound Transit.

Kubota, an immigrant railroad laborer and hotel manager, bought the hotel in February 1941. Soon after, Japan's air attack on Pearl Harbor drew the United States into war, and Japanese-Americans were sent to internment camps.

Kubota was shipped inland to Camp Minidoka in Idaho under Executive Order 9066, which displaced 110,000 people. While other Japanese-Americans lost their land and businesses, Kubota was helped by a prominent Seattle landowner, Charles Clise, who agreed to manage the hotel. Clise described Kubota as a man of "ability and competency of an outstanding quality" in a letter that helped the family win release from the camp to go pick sugar beets in Colorado.

In January 1945, Kubota and another internees returned home to a cordial welcome. The hotel had to be repaired after an earthquake four years later, and it was demolished in 1961. A developer announced plans to build a six- to eight-story office for Standard Oil atop a parking garage. To Kubota's dismay, only the garage and a gas station were finished.

Nonetheless, the family stuck to a long-term lease with garage operators, awaiting its chance to someday erect the high-rise Kubota wanted.

Condemnation

Conceivably, the monorail project might help the Kubotas realize their dreams. Without any monorail condemnation, the garage operators would continue their lease possibly until 2020, Fujii says.

With a condemnation, Fujii hoped to cooperate with SMP, forging a deal where he could develop the leftover land years sooner. And a station would likely make residential or commercial development on the site more attractive to developers.

Fujii hired an architect to make a conceptual drawing of a 10-story housing tower, in the belief he could co-develop with SMP, as the agency is doing near the Pike Place Market with the Samis Land.

He offered to sell the agency enough land for a station, then rent out the remainder until construction is completed. But the monorail's right-of-way manager, Joe McWilliams said paying years of rent would be too expensive.

Fujii believes the agency's real aim is to cash in on the Kubota land, to help make up for a shortage in the monorail's car-tab tax.

Last year, SMP published a report predicting the stations would boost land values as happened near commuter stations in Portland, San Francisco and Vancouver, B.C. Monorail officials point out that their current budget projections do not depend on money from land deals. However, the agency has paid for feasibility studies of development around stations. SMP will not release its study for the Sinking Ship site.

"We, as a public agency, are required to look at all of our assets and get the best return we can, for the taxpayers," McWilliams said.

The assessed value is $4.5 million. The SMP has offered Fujii $6 million. He says money isn't the issue.

"It has a lot of symbolic value to us," he said. "Instead of losing it in the internment, isn't it ironic that 64 years later it's going to be taken from us? The voters of Seattle need to know what kind of a project they have."

Monorail spokeswoman Natasha Jones said the dispute is part of doing business in a setting as rich in history as Seattle. Staffers are trying to think of a way to honor Kubota, perhaps using the agency's public-art program.

In another appeal involving surplus land, Korean immigrants Young and Taiki Lee, who own Cafe Appassionato near the Space Needle, refuse to leave their tiny triangle off Broad Street. They argue the monorail doesn't need the piece — and therefore does not deserve to condemn it. The spot appears as a landscaped zone, in a SMP architectural concept.

Eyesore

The notoriety of the Sinking Ship garage has attracted proposals and political pressures that sometimes overshadow the Kubota family's role.

The SMP has made the public-relations point that the project could improve the neighborhood — publishing an image of a fountain, new street trees and fuschia-toned banners around the proposed Yesler station.

William Justen of Samis, which owns Smith Tower next door, has suggested a pedestrian promenade, a low-rise building with retail space and underground parking. A park also has been suggested, but that drew opposition because Pioneer Square open spaces already are afflicted by drug dealing and loitering.

The Pioneer Square Community Association, which has held dozens of public meetings about the property, would like to partner with Fujii to build an affordable housing complex for people earning $30,000 to $42,000 a year, executive director Craig Montgomery said.

"To me, it's a very compelling story as to why the family should continue to have an ownership interest in that space," he said.

Mike Lindblom: 206-515-5631 or mlindblom@seattletimes.com

WSJ.com OpinionJournal
from THE WALL STREET JOURNAL Editorial Page

CROSS COUNTRY

Let There Be 'Blight'

Welcome to the post-*Kelo* world.

BY WILLIAM R. MAURER
Thursday, January 11, 2007 12:01 a.m.

SEATTLE--The city of Burien, Wash., recently decided that a piece of property owned by the seven Strobel sisters that had long housed a popular diner-style restaurant was not upscale enough for the city's ambitious "Town Square" development, which will feature condos, shops, restaurants and offices. Rather than condemn the property for a private developer and risk a lawsuit, Burien came up with a plan--it would put a road through the property, and the city manager told his staff to "make damn sure" it did. When a subsequent survey revealed that the road would not affect the building itself, but only sideswipe a small corner of the property, the staff developed yet another site plan that put the road directly through the building. A trial court concluded that the city's actions might be "oppressive" and "an abuse of power"--but allowed the condemnation anyway. The Washington Court of Appeals affirmed, and the Washington Supreme Court refused to hear the case.

Welcome to the post-*Kelo* world. The U.S. Supreme Court's 2005 decision made clear that the federal courts would not stop local governments across the country from condemning private property for economic development. While the court noted that states were free to provide greater protections for homes and small businesses if they chose, Washington state stands as evidence that a strong state constitution means little if the courts do not enforce it and local governments disregard it.

When *Kelo* came out, local governments and their lobbyists eagerly explained that ours was not a "*Kelo* state," and that the legislative efforts to restrict eminent-domain abuse in other states were unnecessary here. The Washington Constitution explicitly provides that "private property shall not be taken for private use" (except in very limited circumstances). "It can't happen here" became the oft-repeated message used to placate home and small business owners seeking legislative protections for their property.

When it comes to governmental abuse, "it can't happen here" really means "it is happening right now." Local governments are busily using mechanisms in state law to threaten neighborhoods and abuse property owners, and the state Supreme Court has repeatedly let them get away with it.

Shortly after *Kelo*, the Washington Supreme Court allowed the Seattle Monorail to permanently condemn a piece of property it needed only temporarily for a construction staging area. Once the monorail had completed that legitimate public use, it intended to sell the property at a premium to raise revenue. In this way, Washington courts now allow local governments to condemn more land

than is necessary, for longer than is necessary, in the hopes that the government can play real-estate speculator with whatever is left.

The court also ruled that the meetings at which a local government determines which property to condemn could take place essentially in secret, with the only notice for property owners being a posting on an obscure government Web site. The court ignored the fact that computer usage among minorities, the elderly and the poor is significantly lower than in other segments of the population, and that it is these communities that traditionally have been the target of eminent-domain abuse.

Washington courts now defer to even the most extreme examples of governmental exploitation, exemplified by Burien's treatment of the Strobel sisters. So long as the government can manufacture a fig leaf of public use or possible public use for constitutional cover, local governments can take private property to transfer to other private entities or deliberately target properties not upscale enough for the bureaucrats' "vision."

The tools available for trampling constitutional rights are already there. Since the *Kelo* decision, municipalities have rediscovered Washington's Community Renewal Act, the local incarnation of statutes used to destroy working-class (and often minority) neighborhoods across the country in the 1950s and '60s. The government, under the act, can condemn an entire neighborhood and transfer the property to a private developer so long as the government finds that at least some property in the neighborhood is "blighted." Unfortunately, this statute is so broadly worded that practically every neighborhood in Washington meets the definition of "blight"--things like "obsolete platting" and "diversity of ownership" constitute "blight." The statute provides all the devices a mildly clever planner needs to pull off a *Kelo*-style taking.

Working-class neighborhoods are already feeling the pressure. Auburn recently declared much of its beautiful downtown "blighted," and adopted a Community Renewal Plan. One city manager explained that blight "means anything that impairs or arrests sound growth"--a hugely elastic definition. Similarly, Seattle is considering using the Community Renewal Act in the city's Rainier Valley, one of the most diverse neighborhoods in the nation.

Regardless of strong constitutional protections for private property, governments and courts now view eminent domain as an area where few if any restrictions exist. And not just in Washington. In probably the most appalling example, the U.S. Court of Appeals for the Second Circuit let stand a condemnation in which a developer in the Port Chester, N.Y., demanded that Bart Didden give him either $800,000 or a 50% share in Mr. Didden's property, which was slated to be a CVS pharmacy--or the developer would have the village condemn it. Mr. Didden refused; the next day, the village condemned his property to hand it over to the developer to construct a Walgreens. Tomorrow, the U.S. Supreme Court will consider whether to take the case.

Meanwhile, state and federal courts are turning redevelopment areas into Constitution-free zones, where the government can do what it wants with few or no restrictions. It doesn't have to be this way. Courts could force the government to comply with the state and federal constitutions. Local governments could limit their takings only to legitimate public uses. But until all three branches of government begin taking their constitutional obligations seriously, property owners across the country face the continued threat of eminent-domain abuse, regardless of what the state or federal constitution says.

Ask the Strobel sisters, who are now fighting for just compensation for a property that was never for sale in the first place.

Mr. Maurer is executive director of the Institute for Justice, Washington chapter, and the author of "A False Sense of Security: The Potential for Eminent-Domain Abuse in Washington," recently published by the Washington Policy Center. The Institute litigated the Kelo *case and represents Bart Didden in his appeal to the U.S. Supreme Court.*

Northwest VOICES

A sampling of readers' letters, faxes and e-mails

WASHINGTON VOICES | *Editorial views from across the state*

Better notice on eminent domain

PRIVATE-property owners absolutely should be given direct, personal notice by government entities about to take their property through the eminent domain procedure.

Notification by simply putting it on a Web site or through some other indirect method leaves it to chance whether an affected property owner will be informed in advance.

Yet the state Supreme Court has ruled that Sound Transit in the Puget Sound area could use its agency Web site to satisfy the notice requirement on eminent domain. Under existing state law, the court apparently had no other choice in its ruling.

Accordingly, we welcome the bipartisan push by state Attorney General Rob McKenna, a Republican, and Gov. Chris Gregoire, a Democrat, for legislation to require local governments to give direct notice to affected property owners when an eminent domain decision is approaching. Eminent domain is allowed by our U.S. Constitution for condemnation of private property for the greater good of a public project, such as a highway or school.

But a majority of local governments are relying on Web sites for eminent domain notice, as the court is allowing Sound Transit to do, or on notification simply in published general meeting agendas. That's not adequate notification, McKenna said.

Average persons don't scan government Web sites to determine if their property is threatened by an eminent domain taking and they shouldn't be expected to do that.

The McKenna-Gregoire legislation would require a certified letter be sent to the affected party when a governing body is about to take property. The government entity would also be required to publish in the largest area newspaper notification of the meeting to decide on the eminent domain.

McKenna promised when he ran for attorney general in 2004 that he would be a strong advocate for open government on behalf of the people. He has kept that promise not only with this proposed legislation, but also in other ways. That includes, recently, another bipartisan effort with Gregoire to push for legislation to create a "Sunshine Committee" to promote better disclosure of public records. Exemptions to disclosure approved by the Legislature have unreasonably made it increasingly more difficult for the public to obtain information on government activities.

Access to public records is hugely important to newspapers such as ours in their role as watchdog for the public.

We hope that Gregoire will use her bully pulpit as governor to influence her Democratic colleagues who control the Legislature to pass these important legislative proposals.

— The Chronicle, Centralia, Dec. 27

The Columbian

Washington View: Eminent domain laws in need of makeover

Tuesday, August 8, 2006
DON BRUNELL for The Columbian

A speeding freight train is bearing down on our state Capitol just like it is many other states. Legislators still have a chance to stop it, or at least slow it down, if they will only act. The train is fueled by resentment, frustration and anger over issues related to eminent domain.

The power of eminent domain allows government to take private property for "the public good." Historically, governments have used this power judiciously for significant public projects like highways, dams and bridges, but in recent years, government has expanded its reach, seizing property for relatively minor projects like bike paths.

While Washington's constitution affords additional protections from local governments taking private property for a private use, other eminent domain issues exist. For example, the Seattle Monorail Project used the power of eminent domain to purchase 34 businesses, homes and properties, sometimes over the objections of the owners.

In the end, the Monorail Project died, but officials did not give any of the other owners a chance to buy back their homes or businesses at the original price. Instead, Monorail officials are selling those properties at a profit to pay off the project's debts.

In 2003, Sound Transit condemned Kenneth and Barbara Miller's property for a park-and-ride lot without telling them. The Millers knew officials were interested in their property, but they did not hear anything more about it. The Millers were not even notified about the meeting at which the decision was made.

The Millers sued but lost.

Officials may be buoyed by their court victory and the ability to retire debt by selling off seized properties at a profit. But they shouldn't be. Unless lawmakers act to protect home and business owners in our state from unfair seizures of property, voters will take measures into their own hands through the initiative process.

The Legislature did not specifically address these issues as they relate to eminent domain. Lawmakers should reconsider, because Washington has its own examples of eminent domain abuse.

The intense anger over eminent-domain-related abuses should not come as a surprise. Seizing someone's home or business is not just another real estate transaction. In America, there is a special, powerful dynamic involved in taking a person's private property. In fact, our founding fathers equated the ability to own property with liberty itself.

President George Washington said, "Private property and freedom are inseparable."

President John Adams wrote, "Property must be secured, or liberty cannot exist."

John Jay, the first chief justice of the U.S. Supreme Court, wrote, "No power on earth has a right to take our property from us without our consent."

If recent trends continue, Washington voters could approve even more restrictive measures in the future. If that happens, lawmakers and public officials will have only themselves to blame.

Initiatives are not the ideal way to make law because poorly written measures and technical errors can cause unintended consequences. State lawmakers could head off an initiative by modifying eminent domain laws to provide clear and adequate notice, and allow private property owners to buy back their homes and businesses for the original purchase price when public projects are canceled.

Don Brunell is president of the Association of Washington Business, Washington state's chamber of commerce. Visit www.awb.org.

SEATTLE POST-INTELLIGENCER
http://seattlepi.nwsource.com/virgin/279562_virgin01.html

Condemnation for eminent domain

Tuesday, August 1, 2006

By BILL VIRGIN
P-I COLUMNIST

If this newspaper gig doesn't pan out, maybe I'll try a new line of work -- commercial real estate development comes to mind. One of those big mixed-use high-rise projects would be fun, with glitzy retail, pricy condos and a swank hotel.

And I've got just the property in mind for it -- yours.

But I don't know if you want to sell, and even if you did, I don't know that I want to pay the market price and then some for it. No problem. I'll simply team up with some local governmental entity, have them condemn the property under eminent domain, under the guise of encouraging economic development and revitalization, and turn it over to yours truly.

Sweet deal for me. Not so hot for you.

The prospects for such scenarios became a little too uncomfortably real last year when the U.S. Supreme Court, in a decision variously referred to as the Kelo or New London case (those being the parties involved), ruled that government could use eminent domain to take over private property, even if the intent was to turn it over to someone else for another private use -- a shopping mall, for example.

That decision achieved what is nearly impossible in modern American political life -- uniting conservatives and liberals in outrage. Some state and local governments quickly moved to pass laws forbidding the practice, and at least one major bank in the Southeast said it would not provide funding for such projects.

More than a year later, the Kelo/New London decision continues to reverberate. The Ohio Supreme Court ruled last week that a suburb of Cincinnati cannot take private property by eminent domain for a multiuse project, according to The Associated Press, which reported that "the court found that economic development isn't a sufficient reason under the state constitution to justify taking homes."

Meanwhile, in Oregon, a state even more fond of initiatives than Washington, a ballot measure on the subject appears headed to voters in November. The measure, according to a summary from the Secretary of State's Office, "prohibits (a) public body from condemning private real property if (it) intends to convey to private party."

The Kelo/New London decision created a stir in Washington as well. Attorney General Rob McKenna issued a statement that "the Washington State Constitution prohibits the use of the power of eminent domain to condemn private property for private use and reserves to the judiciary the role in determining what constitutes a public use. The Washington Supreme Court has defined the 'public benefit' limitation more narrowly than the definition used by the U.S. Supreme Court in the recently announced Kelo decision.

"Accordingly, the condemnation of private property for the type of development at issue in the Kelo case would likely be evaluated as a matter of state constitutional law under standards that are potentially more protective of private property rights than those used by the U.S. Supreme Court today."

That wasn't terribly convincing or reassuring to legislators, who introduced a flurry of bills and resolutions in the last session essentially saying, "Darn it, we're not kidding about this." None of them passed.

William Maurer, executive director of the Institute for Justice's Washington chapter, says the skepticism isn't misplaced. (The institute, a libertarian legal foundation, has made private property and eminent domain one of its core issues.) "Government and the courts have been pushing the envelope" as to what would pass muster under the Washington Constitution, he says.

Both have some vague and broad language with which to work, he adds, such as defining areas as "blighted' under an urban renewal law, or the determination of whether the taking is a necessity and the purpose is truly public (the former issue was at the center of a recent controversy in which the city of Renton wanted to use eminent domain to redevelop areas of the Highlands it considered blighted).

Although Washington doesn't have Oregon's statewide vote on the issue to look forward to, at least one county will get to weigh in on it. The Pierce County Charter Review Commission has sent to the November ballot a provision that would prevent the county from exercising eminent domain for economic development.

Eminent domain is hugely controversial enough when it involves projects with at least the hint of public purpose to them, as Washingtonians can attest -- Sea-Tac Airport's third runway, the Seattle monorail and Sound Transit's light rail, for example. People in this country still take a dim view of expropriation of a person's abode, no matter how humble or "blighted," and it's not just because of the emotional pangs that can be raised.

Continue to cheapen eminent domain by extending it to clearly private uses, and those who do so could wind up sinking not only those projects, but also the highways, water lines and the like for which government could build a rational justification.

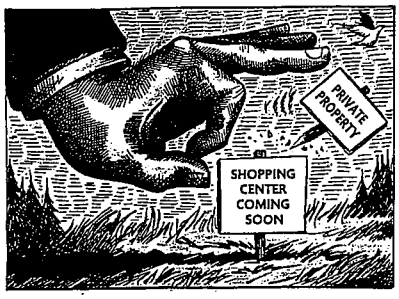
P-I reporter Bill Virgin can be reached at 206-448-8319 or billvirgin@seattlepi.com. His column appears Tuesdays and Thursdays.

THE NEWS TRIBUNE

INSIGHT

SUNDAY, MARCH 19, 2006 • THENEWSTRIBUNE.COM/OPINION/INSIGHT • INSIGHT SECTION

EMINENTLY ARGUED



State Legislature, governor fail to protect residents from abuses of eminent domain

BY WILLIAM R. MAURER

Last summer, the U.S. Supreme Court decided Kelo v. New London, which held that cities may constitutionally seize private property and transfer it to other private entities, such as big-box stores, not only for legitimate public uses (such as a post office or public library), but to increase the tax base.

In poll after poll, public opinion was almost unanimously opposed to the decision. The only people who hailed it were those who use the power – private developers, planners and their political connections. These individuals believe that the government should be able to move people around like game pieces to satisfy some bureaucrat's megalomania or a developer's desire for more money.

Unfortunately, our elected officials in Olympia are listening to the politicians and developers rather than the public. Despite the fact that Americans overwhelmingly oppose eminent domain abuse, legislators this year let a number of bills die that would have protected Washington homes and small businesses from eminent domain abuse.

While Washington's Constitution specifically protects Washingtonians from the kind of land grab that occurred in Connecticut, that protection has been largely eroded by our state Supreme Court to the point where we are as much at risk as anyone else.


Maurer

Nonetheless, municipalities now argue that the protections in the Washington Constitution – which they have been trying to eviscerate for decades – are sufficient. Everything in the henhouse, the fox assures us, is just fine.

They could not be more wrong. Washington law contains a number of vehicles for eminent domain abuse. For instance, our state Supreme Court has held that condemning "blighted areas" for redevelopment and transfer to private entities does not violate the state constitution.

However, the definition of "blighted areas" under Washington law is so broad that practically every neighborhood in Washington is blighted. For instance, "diversity of ownership" indicates blight – that is, if you own your home and your neighbor owns her

Please see ABUSES, page 4

William R. Maurer is executive director of the Washington chapter of the Institute for Justice, a national legal group that advocates greater protection for individual liberty and property rights. The institute filed an amicus brief in the state Supreme Court case involving the Seattle monorail authority.

State's constitution, high court shield us from improper condemnation of property

BY HUGH SPITZER

I'm proud to live in a "non-Kelo" state.

Last year the U.S. Supreme Court upheld a Connecticut law that allowed New London to condemn private houses for resale to others as part of an urban renewal plan. The court ruled that subject to basic constitutional constraints, it was up to the states to determine what types of projects were an appropriate "public use" for eminent domain purposes.

But the Kelo case has little effect here. For half a century Washington's Supreme Court has denied local governments authority to condemn private property for economic development purposes.

Our court's firm ruling is that a "public use" condemnation must be either for a publicly owned facility or for true public-health-and-safety purposes.

In 1959, our court ruled that the Port of Seattle could not condemn a private farm for conversion to private industrial development. Similarly, a 1981 case held that the City of Seattle could not condemn the Mayflower Hotel and Sherman and Clay buildings to hand the property to a shopping mall developer.

However, the Washington Supreme Court has upheld the condemnation of private property as part of a formal urban renewal program – but only where the established purpose of the program was to eliminate


Spitzer

blight.

In the 1963 Miller v. Tacoma case, the court ruled that the city could condemn a private apartment building and resell the land as part of an overall program to clear an area of dilapidated housing, health and safety hazards and crime.

A key holding in Miller v. Tacoma was that eminent domain was appropriate to remedy "a menace to the public health, safety, welfare, and morals in its present condition and use."

But the court reiterated that a local government could not exercise condemnation to promote "what it considers a higher and better economic use."

The Miller court indicated that so-called "blight" such as inappropriate uses of land or buildings, excessive land coverage or uses that impair or arrest growth, would be

Please see SHIELD, page 4

Hugh Spitzer is an attorney with Foster Pepper PLLC in Seattle and teaches local government law and state constitutional law at the University of Washington School of Law. His firm represented the Seattle monorail authority in the case cited here, but Spitzer had no involvement in the case.

ABUSES

CONTINUED FROM PAGE 1

home, both properties are blighted.

Other things constituting blight include "excessive land coverage," defective title or anything that "substantially impairs or arrests the sound growth of the municipality or its environs." This last catch-all brings pretty much any property under the "blight" definition, because property that "substantially impairs or arrests the sound growth of the municipality" will almost always be whatever the government (or a developer) pays a consultant to say it is.

Our state Supreme Court has also made clear that it will not stop a municipality from engaging in eminent domain abuse so long as it can manufacture a fig leaf of a legitimate public use somewhere in the project.

This result came about from a case involving the Seattle monorail, which permanently condemned property in Pioneer Square that it only needed for a temporary public use so that it could sell that property to anyone, including private interests, when the public use was completed.

Constitutional rights are only as strong as the courts that protect them, and our state courts have demonstrated that they are disinclined to protect Washington homes and small businesses. It was therefore incumbent on the Legislature to act, and legislators from both parties proposed bills that would have protected Washington homes and businesses.

The governor even offered her own bill, albeit a deeply flawed effort that actually would have made abuse easier. But the leaders of the Legislature sided with those who wish to engage in, or benefit from, eminent domain abuse and allowed these bills to die.

With Olympia's inaction, Washingtonians are left with no real protection from abuse. So, it may be necessary for the people to resort to their initiative power to pass real eminent domain reform, because it is clear that they cannot count on Olympia to protect their rights.

SHIELD

CONTINUED FROM PAGE 1

"insufficient to support a constitutional 'public use.'"

In essence, the Washington Supreme Court has for decades taken the same position as the dissenters in the New London Kelo case – Justices O'Connor, Rehnquist, Scalia and Thomas – and we should be proud of it.

We should also remember that municipal condemnations for "blight" constitute just a tiny sliver of the already small number of condemnations that occur in Washington state. Eminent domain is mostly used to obtain property and rights of way for roads, schools, parks, police stations and similar public facilities.

In recent years, "blight" condemnation has been used primarily to eliminate meth labs, houses of prostitution and abandoned buildings.

This year, a strident activist group unsuccessfully lobbied the Legislature to hobble normal government use of eminent domain for public facilities, manipulating public concern about the Kelo case to get traction for a broad-based attack on condemnation for community purposes.

Gov. Chris Gregoire and many legislators wanted to reaffirm the state Supreme Court's longstanding ban on eminent domain for private economic purposes. They also wanted to tweak the statutes to make it possible for landowners to reclaim property that a government resells soon after condemnation.

But it became clear that this type of legislation requires careful consideration and drafting between sessions. For example, what if three condemned parcels have been merged into a single legal lot? Which former landowner has a right to purchase it?

Or what if the former landowner was a partnership that sold its interests to an international shopping mall corporation? Should that entity have a right to reclaim the land and get a windfall five years after full market value had been paid? These are tough questions that deserve deliberate and thoughtful debate.

Regardless of adjustments to eminent domain law that might be made by next year's Legislature, we can all rest assured that our state constitution will continue to protect all Washingtonians from losing their property so that some other private entity can put it to "better" economic use. That was banned 50 years ago, and it's going to stay that way.

SEATTLE POST-INTELLIGENCER
http://seattlepi.nwsource.com/opinion/299168_eded.html

Eminent Domain: Limits to power

Thursday, January 11, 2007

SEATTLE POST-INTELLIGENCER EDITORIAL BOARD

Bipartisan concern about Washington's eminent domain laws is a first step toward fairness. Sustained attention will be needed to eliminate the risks of abuse of power that now lack any realistic court remedy.

It's very encouraging to see Attorney General Rob McKenna, Gov. Chris Gregoire and legislators of both parties confront the inadequacy of protection. A bill this legislative session should require general public notification (beyond Web-based meeting dockets) of condemnation decisions and direct notification of landowners by any government considering using eminent domain to acquire property. Openness is vital.

That will deal with one problem. But a 2005 U.S. Supreme Court decision in a Connecticut case helped bring to light several concerns.

Under state law, governments can declare areas blighted as a step toward acquiring private property to turn it over to another private owner for development. That's offensive, especially when Washington court precedents have developed (over time and in good faith) in a way that courts believe they can't interfere with any but utterly arbitrary actions by local governments.

Although easy reassurances about the sanctity of rights in this state were offered after the 2005 decision, preventing abuse could be complex.

The Legislature, which is a better place to write remedies than the courts, must start reforms now. But lawmakers must come back next year equally eager to create wider protections.

The Seattle Times
seattletimes.com

Sunday, January 7, 2007 - 12:00 AM

Editorial

No taking property without notification

If a government agency wants to take your land for a public use, it ought to notify you of its intention. If it plans to make its decision about your land in a public meeting, it ought to notify you of the meeting.

We support Attorney General Rob McKenna's proposal to make this requirement the law in Washington. Currently, it is not. That became obvious last year, when the Washington Supreme Court ruled against Kenneth and Barbara Miller. Sound Transit had made its decision to take the Millers' Tacoma property at a public meeting. The agency had posted a notice of the meeting on its Web page, with an agenda item about taking property for a park-and-ride lot. It had not specified the Millers' property nor told the Millers individually, and the court said there was no law requiring it do so.

We said at the time there should be such a law, which McKenna now proposes and House Majority Leader Lynn Kessler, D-Hoquiam, will sponsor. This bill is about procedure — and, as Kessler says, "about respect."

There is a second problem in the world of property takings.

It is about defining when government can take property and when it can't. The state constitution says private property may be taken only for public use, but courts have allowed takings for uses that were not really public.

A new paper by the Washington Policy Center says one example is the Community Renewal Law, under which a city can declare an area blighted, condemn private property that is not blighted, and offer it for use by a private developer, all under the permissive idea that community renewal is a public purpose.

We believe property takings should be limited to uses that are really public: roads, schools, fire stations, etc., the protection of public safety and health, and common-carrier utilities such as pipelines and electric transmission lines.

How to define this is a technical question, and to that end McKenna is appointing a group of experts. They should draw up a bill that Democrats and Republicans can both support.

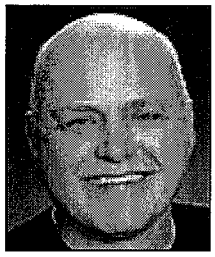
The Seattle Times
seattletimes.com

Thursday, January 26, 2006, 12:00 a.m. Pacific

Guest columnist

Eminent domain: eminently unfair

By Tom Thompson
Special to The Times



Tom Thompson

It's welcome news that lawmakers in Olympia are sponsoring measures this session to clarify the state constitution's ambiguous stance on eminent domain.

Their effort was prompted by the U.S. Supreme Court's ruling last summer in Kelo v. New London, one of the court's most important property-rights decisions in decades.

The justices ruled that the city of New London, Conn., could use eminent domain to seize homes — properties, the court agreed, that were not "blighted, or otherwise in poor condition" — from a handful of owners who refused to make way for a massive, private redevelopment plan.

The practice of eminent domain has been abused throughout U.S. history.

When the railroads and many of the nation's highways were built, landowners were sometimes told that their properties were condemned and they had to go to court if they wanted "just compensation."

Even with such high-handed tactics, most eminent-domain condemnations were used for clearly delineated public uses. Most of us commonly have associated the use of eminent domain with roads, schools or parks.

But in 1954, the U.S. Supreme Court changed the requirement of "public use" to "public purpose." That decision allowed condemnations for slum clearance, even if the property ended up in the hands of private parties. Since then, state and local governments have used this as a green light to give new cynical meaning to the expression, "I'm from the government, and I'm here to help you."

The U.S. Supreme Court's decision last summer is a continuation of a scandalous process gone mad.

First, state and local governments condemned slums, then blighted areas, then not very blighted areas, and now perfectly fine areas, and not just in Connecticut.

In Lakewood, Ohio, for example, a whole neighborhood of colonial homes was recently deemed "blighted" because the backyards were too small and the homes didn't have two-car garages.

In the past five years, both state and local governments have taken or threatened to take more than 10,000 homes and small businesses to turn them over to private developers, according to a report compiled by the conservative Institute for Justice in Washington, D.C.

What these numbers reflect is not some noble effort to revitalize American cities but often a concerted campaign by city governments and large real-estate developers to exploit eminent domain for their private gain. In Mesa, Ariz., and Cincinnati, Ohio, city council members or redevelopment corporation board members either owned property that likely would have increased in value due to eminent-domain redevelopment or were themselves the contractors bidding on lucrative construction projects.

In every case of eminent-domain abuse, the cities have justified their actions on the basis of a need to make the tax base bigger, or to create jobs. Thus, when mega-pharmacy chain CVS wanted to build a new drugstore in Ambridge, Penn., its local developer simply asked the government to seize the land and give it a lease; the town complied. The city of Cypress, Calif., prevented a local church from building on property it had legally acquired in order to make the land available to a "big box" retailer.

Too many of the "big box" retailers in need of a vast swath of land are urging cities to condemn property to serve their own interests, and donating large sums to local officials to help with the effort. Tax breaks don't seem to be enough!

Even an eventual victory in preventing condemnation of property takes its toll; it forces somebody to live for years with the threat of having his property unjustly taken away. It has become an accepted part of the process that a private developer can pay for a study showing the property is worthy of condemnation, and can even pay the attorneys' fees involved in a seizing of land.

Often the effect — and usually the intended effect — is that people will sell "voluntarily." Although most states require that "just compensation" be paid for the land, this often doesn't take into account the difference between what the city determines is fair market value and the property's open-market value.

Whatever the efforts of our state representatives to protect us from the abuse of eminent domain, they are already too late for Lovie Nichols of Bremerton. When the city condemned 22 homes there in 1996 ostensibly to make way for a sewer-plant extension, all of the owners settled with the city except for Nichols, an elderly widow who refused to vacate her home of 55 years.

She received an eviction notice, but she was not told at the time that the city had sold her property out from under her as part of an 11-acre land deal with a local car dealer. Nichols finally was forced to move out of her home after the Washington State Supreme Court declined to review her case.

For the sake of future Lovie Nicholses, our lawmakers must make it harder for the state to take someone's private property.

Tom Thompson has written the screenplay for a feature film on eminent domain. He also is an adjunct faculty member in the School of Business and Economics at Seattle Pacific University.

SEATTLE POST-INTELLIGENCER
http://seattlepi.nwsource.com/opinion/230595_edomained.asp

Eminent Domain: Robin Hood in reverse

Thursday, June 30, 2005

SEATTLE POST-INTELLIGENCER EDITORIAL BOARD

In the wake of the U.S. Supreme Court's ruling that government can use the power of eminent domain to take one's private property and give it to another, some in Washington state are obviously tempted to take a bifurcated view. Yes, it seems fundamentally wrong to allow the confiscatory power of the state to be used in such a manner, but, don't worry; they're not allowed to do that sort of stuff in this state.

It's irresponsible to turn a blind eye to heavy-handed government land grabbing at the national level just because the Washington Constitution may block its imposition here. Besides, such complacency may be misguided.

The state constitution does say, "Private property shall not be taken for private use. ..." but it also says, "No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner. ..."

Anyone confident that private property in Washington state cannot be taken through eminent domain only to be sold to another private owner has forgotten the case of Lovie Nichols. Five years ago, the then 75-year-old Bremerton grandmother was forced out of her home by the city, even though she protested that her property was going to be sold to a local car dealer as part of a real estate package designed to raise revenue for the city. Both the state Court of Appeals and Supreme Court declined to review her case.

The U.S. Supreme Court's ruling in a Connecticut case that government can take (even with due process and fair compensation) one citizen's property and hand it to another because the new owner's use of it is deemed more to the public benefit is chilling.

Justice Sandra Day O'Connor identified the chill's source in her dissent: "The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms ... government now has license to transfer property from those with fewer resources to those with more."

SEATTLE POST-INTELLIGENCER
http://seattlepi.nwsource.com/virgin/298869_virgin09.html

Parties unite on eminent domain

Tuesday, January 9, 2007

By BILL VIRGIN
P-I COLUMNIST

Who says bipartisanship is dead? Every now and then, an issue surfaces that manages to unite people across partisan and ideological lines.

In Washington state, that issue is eminent domain.

Or more specifically, eminent domain when the purpose is to transfer private property to another private owner for a private-sector use.

A controversial decision by the U.S. Supreme Court in 2005 has spurred both Republican and Democratic politicians to push legislation to address at least one concern raised in connection with the issue.

But, as is typical in Washington, the big decisions on eminent domain have likely been postponed until after this session, and may be put in the hands of -- what else -- a task force.

What will be fascinating to watch is just how long the current prevailing, boundary-crossing spirit lasts.

If divisions occur and objections to doing something significant on the issue of eminent domain arise, look for them to come not from between political parties, but between city and state officials. For this mess we have to thank the U.S. Supreme Court's Kelo decision that government can take private property through eminent domain, even if the intent is to use it not for a "public" purpose such as a school or highway but for private economic development.

The outcry was immediate and widespread. A number of states, including Oregon, put measures on the ballot to ban eminent domain when used for private economic development. Oregon's measure, to prohibit a public body from condemning private property with the intention of transferring it to another private party, passed with 67 percent of the vote.

In Washington, initial pronouncements that restrictions on eminent domain in this state would limit Kelo-like cases were met with considerable skepticism. Those skeptics were not reassured when the state Supreme Court last year issued a decision on a different part of the eminent-domain debate, having to do with notification. Sound Transit argued, and was upheld, that a posting on its Web site constituted sufficient notice that it was planning to condemn a piece of property.

The response to that is a bill backed by Gov. Chris Gregoire (Democrat), Attorney General Rob McKenna (Republican) and House Majority Leader Lynn Kessler (D-Hoquiam), which requires direct notification to a property owner as well as a newspaper legal notice of a meeting at which property condemnation is to be discussed.

"It's not asking too much to require that a $4.64 certified letter be sent to property owners who may have

their property taken without their consent," McKenna said in a statement last month. "We shouldn't expect people to click through hundreds of Web pages every week to make sure their property isn't being considered for condemnation."

Last week McKenna announced plans for a task force to review the state's eminent-domain laws, with a report due in time for the 2008 legislative session. Who will serve on this task force hasn't been announced. According to a release from the Washington Policy Center, which sponsored the news conference at which McKenna made the announcement, the task force's goal is "to seek ways to reduce the threat of eminent-domain abuse without interfering with legitimate exercises of the government's ability to condemn property for legitimate public uses."

Contained in that quote is the very point that might cause the task force to grind to a halt or issue a non-committal report.

One of the prime issues involving eminent-domain laws in Washington is a provision in the state's Community Renewal Law that allows municipalities to designate large areas as "blighted." That permits the transfer of private property for economic development by others, critics contend; the definition of blighted is so broad and vague, they add, as to permit its application almost anywhere.

But that broadness and vagueness are attractive to cities contemplating sweeping economic redevelopment of multiple blocks of property or entire neighborhoods. The city of Renton proposed a redevelopment plan of the Highlands area until residents yelled loud enough to block it.

The city of Seattle, meanwhile, has been proposing a redevelopment plan for Rainier Valley. According to information from the city's Web site, "In the rare instances when eminent domain may be used, it would be used as a last resort, and would require approval from the community renewal board and Seattle City Council."

The cities may decide they'd just as soon not give up such powers that, they would argue, can be used to achieve some greater public good such as "community renewal." The property owners wary of their real estate going to someone else's profit-making venture likely won't see it the same way.

Watch who gets named to the task force, and who tries to lobby it, to get a sense of whether the Legislature gets anything definitive to work with next year -- or whether it gets the sort of report that can be summed up as "on the one hand, on the other hand, further study is needed."

P-I reporter Bill Virgin can be reached at 206-448-8319 or billvirgin@seattlepi.com. His column appears Tuesdays and Thursdays.

Suddenly Mayor Baarsma's on the side of fairness

MICHAEL BINDAS; Staff attorney Institute for Justice, Washington Chapter Seattle
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How ironic that Tacoma Mayor Baarsma is urging the Port of Tacoma to exercise fairness in dealing with property owners whose land the port is attempting to take by eminent domain (Dan Voelpel column, 6-10). Only three months ago, the mayor displayed a complete disregard for fairness in dealing with property owners on another eminent domain issue.

On March 27, the City Council voted to authorize condemnation actions against property owners in South Park Plaza. Councilman Tom Stenger objected to the vote because the property owners had not been given notice that the vote would occur.

Stenger observed that a bill then pending in the state Legislature would require that notice be given by certified mail at least 15 days before such a vote and suggested the city had a "moral requirement" to provide adequate notice.

Baarsma, however, insisted on proceeding, and the council voted 7-2 to authorize condemnation actions. Just three weeks later, the bill Stenger mentioned became law. That means today, Baarsma's conduct would be not only immoral, but also illegal.

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SEATTLE POST-INTELLIGENCER
http://seattlepi.nwsource.com/local/301256_condemnation26.html

Bill would revise condemnation rules

Senate panel passes measure requiring early written notice

Friday, January 26, 2007

By MELISSA SANTOS
P-I REPORTER

OLYMPIA -- Lawmakers have taken the first step toward revising Washington's eminent domain laws, but proponents of reform say more needs to be done to ensure that landowners are treated fairly by the government.

The Senate Judiciary Committee approved a bill Wednesday that would require government agencies to notify property owners by mail and in the newspaper 15 days before finalizing condemnation decisions instead of posting meeting information on the Internet. Committee Chairman Adam Kline, D-Seattle, said the bill corrects "a failure of government" and is set to "sail through the Senate."

But an eminent domain bill being introduced early next week in the House is bound to generate more controversy, said its sponsor, Rep. Larry Springer, D-Kirkland.

That measure would prevent jurisdictions from condemning property unless they can prove that they have exhausted all other options. It would also bar the government from taking property solely to build shops and condominiums or otherwise stimulate economic development.

And the bill would allow property owners the chance to buy back their land at its original selling price if it goes unused, which addresses concerns raised by landowners whose property was condemned to be used for the failed Seattle Monorail Project.

"The property owners wanted to buy it back, but the price became too expensive," Springer said.

Springer's bill would exclude port authorities that condemn property for economic development purposes, he said.

William Maurer, executive director of the Washington chapter of the Institute for Justice, said Springer's bill would help ensure that jurisdictions don't take larger chunks of land than are necessary for the projects they're undertaking.

"Right now, a government agency could take more property than it needs for longer than it needs for the public use, and then hope that there'll be some remainder property that it can use to sell to private entities," he said. "What the Supreme Court has essentially said is, 'We're not going to review the determination of whether something is necessary for public use.' "

That's what makes the bill passed Wednesday in committee so important, Maurer said. It gives property owners notice so they can appeal to a government agency before it meets to make a final decision about condemning their land.

"This is a case that cries out for the Legislature to act, to make sure we have reasonable notification of the seizure of somebody's property," said Sen. Mike Carrell, R-Lakewood, the bill's sponsor.

"You look at every process in government, and we have ways of making sure that we're notifying people in basically every process. To have somebody, have their property taken and then hear repeatedly in process after process that everything we're doing is absolutely correct is simply wrong."

Carrell's bill addresses issues raised during a case between Tacoma resident Ken Miller and Sound Transit when the city wished to make transportation improvements on his property. Miller did not receive written notice of the condemnation decision.

"There's no recourse for any landowner who doesn't know in advance," Miller said, appearing at Wednesday's hearing. "When they tell you upfront that there will be no way to stop this, they weren't kidding."

Sound Transit spokesman Geoff Patrick said Sound Transit supports the legislation approved Wednesday in committee. He said that since Sound Transit's legal battle with Miller, it has started sending property owners notices of pending condemnation decisions by mail.

The bill passed unanimously in committee, and has a bevy of support. Thirty-seven senators signed on to the legislation, as have 55 members of the House. The legislation also has the support of Gov. Chris Gregoire.

PROPERTY RIGHTS

The Legislature is considering measures that would revise Washington's eminent domain laws.

- One would require government agencies to notify property owners by mail and in the newspaper 15 days before finalizing condemnation decisions.

- A more controversial bill would prevent jurisdictions from condemning property unless they can prove that they have exhausted all other options. It would also bar the government from taking property solely to build shops and condos or otherwise stimulate economic development.

For more info: leg.wa.gov/legislature/.

P-I reporter Melissa Santos can be reached at 360-943-8311 or melissasantos@seattlepi.com.